92-1050

No. _____

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

IN RE RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD.,

Petitioners.

PETITION FOR WRIT OF MANDAMUS TO THE HONORABLE JOHN K. DIETZ, PRESIDING JUDGE OF THE 250TH JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS

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QUESTIONS PRESENTED

I. Whether it is an unconstitutional invasion of privacy for a state to force a litigant to produce confidential financial information absent a showing by the requesting party that the confidential financial information is both relevant and material to the issue before the court.

II. Whether a state can compel a foreign litigant to produce confidential information in violation of confidentiality statutes of the foreign litigant's jurisdiction when such production would result in the imposition of criminal penalties on the litigant and the requesting party has not met its burden to show that the discovery is necessary to the action, not otherwise readily attainable and directly relevant and material.

LIST OF PARTIES

1. The Honorable John K. Dietz, Presiding Judge of the 250th Judicial District Court of Travis County, Texas

2. Risk Managers International, Inc.

3. Herschel Hancock

4. Corporate Underwriters, Ltd.

5. State of Texas and the Texas State Board of Insurance [Real Parties in Interest]

RULE 29.1 LIST

There is no parent or subsidiary company either of Risk Managers International, Inc. or Corporate Underwriters, Ltd.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

IN RE RISK MANAGERS INTERNATIONAL, INC.;
HERSCHEL HANCOCK, Individually and as
Officer of RISK MANAGERS INTERNATIONAL,
INC.; and CORPORATE UNDERWRITERS, LTD.,

Petitioners.

PETITION FOR WRIT OF MANDAMUS TO THE HONORABLE JOHN K. DIETZ, PRESIDING JUDGE OF THE 250TH JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS

Petitioners, Risk Managers International, Inc., Herschel Hancock, Individually and as Officer of Risk Managers International, Inc. and Corporate Underwriters, Ltd., hereby petition for a Writ of Mandamus to review the orders of the Honorable John K. Dietz, Presiding Judge of the 250th Judicial District Court of Travis County, Texas in this case compelling discovery of the Petitioners' confidential information.

THE CASE BELOW

The style of the case below is *The State of Texas and The State Board of Insurance v. Risk Managers International, Inc.; Herschel Hancock, Individually and as Officer of Risk Managers International, Inc.; and Corporate Underwriters, Ltd.*, Cause No. 471,468 in the 299th Judicial District Court of Travis County, Texas.

JURISDICTION

The Supreme Court of the State of Texas overruled Petitioners' motion to file petition for writ of mandamus on September 16, 1992 by letter. A copy of the letter is reproduced at Appendix A-2 hereto. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1651(a) (1949) and 28 U.S.C. § 1257(a) (1988).

CONSTITUTION, STATUTES AND AUTHORITIES INVOLVED*

United States Constitution, Fourth Amendment

Texas Insurance Code Art. 1.14—1

§ 2(a)
§ 2(b)(4)
§ 3(d)
§ 11
§ 12

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*The text of these provisions is reproduced in full at Appendix B hereto

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Turks & Caicos Islands, Confidential Relationships Ordinance 1979, § 2

Turks & Caicos Islands, Confidential Relationships Ordinance 1979, § 4

Turks & Caicos Islands, Companies Ordinance 1981, § 199 — § 202

Restatement (3rd) of Foreign Relations Law § 442 (1987)

RULE 20 STATEMENT

In this proceeding, Petitioners, defendants in the underlying cause, seek the issuance of a writ compelling the Honorable John K. Dietz, Presiding Judge in the 250th Judicial District Court, Travis County, Texas, to vacate his orders compelling discovery of the Petitioners' confidential information. The orders complained of are included at Appendix C and Appendix D.

This case was originally filed in 1989 by the State of Texas when the State obtained an illegal receivership against Petitioners on the basis of misleading affidavits and pursuant to an improper ex parte hearing. For three days, the State plundered the Petitioners' records until Petitioners' attorneys could obtain dissolution of the illegal receivership. The State next attempted to obtain, through the discovery process, additional confidential information. Pertinent parts of the State's discovery requests to which Petitioners object are included at Appendix C-1-1, C-2-1 and Appendix E.

Petitioners presented their Motion for Leave to File Petition for Writ of Mandamus and for Immediate Temporary Relief to the Third

Court of Appeals, Austin, Texas, on June 15, 1992. The Court of Appeals denied Petitioners' Motion for Leave to File Petition for Writ of Mandamus and for Immediate Temporary Relief on July 1, 1992. [Appendix A-1]. On July 28, 1992, Petitioners presented their Motion for Leave to File Petition for Writ of Mandamus and for Immediate Temporary Relief to the Supreme Court of Texas. The Supreme Court of Texas denied this Motion by letter dated September 16, 1992 which is included at Appendix A-2.

Issuance by this Court of a writ of mandamus authorized by 28 U.S.C. § 1651(a) is justified because the Third Circuit Court of Appeals of Texas and the Texas Supreme Court denied Petitioners' request for mandamus, and only the United States Supreme Court now has appellate jurisdiction and the discretionary power to mandamus Judge Dietz, the presiding judge of the state district court, who ordered production of the confidential information. In addition, there are present exceptional circumstances warranting the exercise of the Court's discretionary powers. Specifically, Petitioners are entitled to a writ of mandamus because the orders complained of command immediate compliance. Petitioners must begin to produce all of the confidential information immediately and, once produced, the Petitioners will not be able to regain their constitutional right to privacy in such information. Thus, production of this confidential information would result in the unreasonable and unrecoverable invasion of Petitioners' constitutionally guaranteed right to privacy. Further, production of confidential information pertaining to Corporate Underwriters, Ltd. as ordered would subject Corporate Underwriters, Ltd. to criminal penalties in the

Turks and Caicos Islands. For these reasons, Petitioners contend that any remedy offered by an ordinary appeal is inadequate and relief cannot be obtained in any other form or from any other court.

STATEMENT OF THE CASE

Corporate Underwriters is an insurance company incorporated and lawfully operating under the laws and statutes of the Turks and Caicos Islands in the British West Indies. Corporate Underwriters is selling and providing independently procured insurance for Texas employers who choose to contract with it. By the express intent of the insurer and the insureds, this insurance is outside of Texas' workers' compensation system and is not statutory workers' compensation insurance. This arrangement is legal and benefits employers who purchase workers' compensation insurance because there is a significant savings in premium cost and improved processing and claim payment services. RMI is a third-party administrator for Corporate Underwriters and performs certain services for it, such as claims administration. Mr. Hancock is an RMI employee. Neither Mr. Hancock or RMI are insurers.

In March 1989, Texas' State Board of Insurance served a notice of deposition and subpoena duces tecum on Mr. Hancock, as President of RMI. He appeared at the deposition and, upon advice of counsel, asserted his Fifth Amendment and state constitutional rights, opposing the State's demands to produce records and to testify and produce evidence against himself. The State then filed suit against Mr.

Hancock, asking the court to compel him to produce the requested records and answer the State's questions. The Travis County District Court ordered Mr. Hancock to produce the documents and Mr. Hancock timely appealed to the Third Court of Appeals at Austin, Texas. In connection with this earlier case, Mr. Hancock posted a supersedeas bond superseding the production of the documents subject to the Fifth Amendment privilege pending appeal.

Apparently angered that one of its citizens would assert the Fifth Amendment and determined to circumvent Mr. Hancock's constitutional protection against unreasonable, aggressive government action, the State then embarked on an outrageous and offensive course of harassment. While the above Fifth Amendment suit was pending, the State obtained a facially improper, illegal receivership upon RMI purportedly under the authority of *Tex. Ins. Code*, Art. 21.28 by filing a new lawuist (the instant action). The receivership was obtained ex parte and it was instituted without giving notice to Corporate Underwriters' attorneys. The State abused its power as receiver by seizing Mr. Hancock's personal files and documents from RMI's premises; by summarily taking over RMI's premises; by making intimidating statements to RMI employees and customers; by preventing RMI from conducting its business and third-party administration for Corporate Underwriters; by using RMI's office equipment and supplies and consuming RMI food and drinks without compensation to RMI; by threatening to and, in one case, actually searching RMI employees' purses under threat of contempt of court; and by making false, damaging statements concerning Petitioners to third parties with the

intent and knowledge that the statements would be republished. The State seized, copied and took many of the very documents that were the subject of the Fifth Amendment plea and the supersedeas bond in the first case. Some of the privileged documents were copied using RMI's copier and sent to the State's Austin office using RMI's fax machine.

Petitioners had the illegal receivership dissolved as soon as practical to stop these abuses, but the State continues to pursue Petitioners' confidential information through the discovery process in the underlying lawsuit. The underlying case in this matter is now framed by the State primarily as an attempt to stop the Petitioners from engaging in the unauthorized practice of insurance. The Petitioners contend that they are not engaged in the unauthorized practice of insurance because any acts they conduct in the State of Texas with regard to risks resident, located or to be performed in the State have been performed pursuant to the exemption provided by Article 1.14-1, §§ 2(b)(4) and (12) of the *Tex. Ins. Code*, commonly referred to as the "independently procured insurance" exemption. [Appendix B-5-3]. This provision grants an exemption from the definition of what constitutes the business of insurance as defined by Article 1.14-1, § 2(a) of the *Tex. Ins. Code*. [Appendix B-5-1].

For RMI, the only documents that the State is seeking that are still the subject of dispute are confidential financial information. Corporate Underwriters has not produced any confidential information, including confidential financial information, based on its reliance on the confidentiality laws of the Turks and Caicos Islands.

The Petitioners do not want to provide their confidential information to the State. From the start, Petitioners timely and properly raised their objections and exemptions from discovery, and have not waived any such objections or exemptions. The remaining documents in issue contain personal, confidential and private information of the highest magnitude. The discovery requests propounded by the State with respect to financial information are extremely broad. Requested financial information includes personal and corporate financial statements, bank records, bank statements, deposit slips, cancelled checks, claims deposit account information, wire transfer acknowledgements, assets and liabilities and documents supporting the same, salary and compensation information, stocks, dividends received from any source whatsoever, accountant information, payments and receipts in kind, bank records, investments made, reserve loss and premium information, audit reports, interest earned, receipts from all sources, and asset holdings, with all of this information covering the period from January 1985 to the present.

REASONS FOR GRANTING THE PETITION

Introduction

If the Petitioners are compelled to produce the confidential information requested, they will be irreparably harmed by the State's conduct because the invasion of their constitutionally protected right to privacy that would ensue could not be remedied by an appeal. No appellate court could cure the trial court's discovery error once committed. After the privileged documents are inspected, examined

and reproduced, a holding by an appellate court that the trial court had erroneously issued the order would be cold comfort to Petitioners in protecting their papers. Regarding Corporate Underwriters, this infringement of its constitutional rights would be further aggravated by the fact that to comply will result in severe criminal penalties imposed upon it by the Turks and Caicos Islands.

I.

THE ORDER COMPELLING THE PRODUCTION OF PETITIONERS' CONFIDENTIAL INFORMATION IS IN DIRECT CONTRAVENTION OF PETITIONERS' RIGHT TO PRIVACY UNDER THE CONSTITUTION OF THE UNITED STATES

Petitioners, as litigants in the underlying case, have a constitutional right to avoid public disclosure of private information. *Whalen v. Roe*, 429 U.S. 589, 97 S.Ct. 869 (1977). In *Whalen*, the Supreme Court clarified the privacy interests protected by the Constitution:

> The cases sometimes characterized as protecting "privacy" have in fact involved at least two different kinds of interests. One is the individual interest in avoiding disclosure of personal matters, and another is the interest in independence in making certain kinds of important decisions.

Id. at 598-600, 97 S.Ct. at 875-877 (footnotes omitted). In *Nixon v. Administrator of General Services*, 433 U.S. 425, 97 S.Ct. 277 (1977), the Supreme Court reaffirmed that one element of privacy is the

individual's interest in avoiding disclosure of personal matters. The *Nixon* courtY relied mostly on Fourth Amendment case law and analysis in evaluating the privacy claim at issue. The implication is that the constitutional right to non-disclosure of personal matters is rooted primarily in the Fourth Amendment. 43 U.S. at 458-65, 97 S.Ct. at 2797-801. The State must justify the burden it imposes on Petitioners' constitutional right to privacy by its requests for information. *McKenna v. Fargo*, 451 F. Supp. 1355 (D.C.N.J. 1978).

Both the Fifth and Third Circuit Courts of Appeal have interpreted *Whalen* and *Nixon* as recognizing a constitutional right of confidentiality in personal matters. Further, constitutionally protected matters clearly include financial matters. The court in *Plante v. Gonzalez*, 575 F.2d 1119 (5th Cir. 1978), *cert. denied*, 439 U.S. 1129, 99 S.Ct. 1047 (1979), stated that financial privacy is a "matter of serious concern, deserving strong protection." This protection is extended to corporations as well as to individuals. *Tavoulareas v. The Washington Post Company*, 724 F.2d 1010 (D.C. Cir. 1984). State demands for corporate information must be reasonably definite and reasonably relevant to some proper legislative purpose to avoid "serious problems under the Fourth Amendment." *Civil Aeronautics Board v. United Airlines, Inc.*, 542 F.2d 394 (7th Cir. 1976).

The significance in this context of the Supreme Court's decisions in *Whalen* and *Nixon* and of the Fifth Circuit's decision in *Plante* lies in their explicit recognition of the constitutional right to avoid disclosure of personal matters. In discovery matters, individuals are often forced by a court to disclose the kind of personal information

deserving privacy protection as described by these decisions. An individual's constitutional right to privacy can thus be implicated by the discovery process to the same extent that it is implicated by, for example, the disclosure requirements of statutes. *See, e.g. Rhinehart v. Seattle Times Co.*, 467 U.S. 20, 104 S.Ct. 2199 (1984)(recognizing significant federal constitutional privacy interests in litigants' maintaining the confidentiality of personal information produced in discovery). In each case, the state is forcing disclosure of personal information.

In both *Whalen* and *Nixon*, the Supreme Court determined the propriety of state intrusion by balancing the need for the intrusion against the severity of the intrusion, similar to traditional Fourth Amendment analysis. *See e.g., Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968). This balancing standard has been adopted by a number of courts faced with determining the lawfulness of intrusions on privacy interests. In *Plante*, the Fifth Circuit concluded that the balancing test is appropriate in judging intrusions on the first of *Whalen's* two recognized privacy interests: the right to avoid disclosure of personal matters.

Under the facts before this Court, the most important factor to consider in applying the balancing test is that the State's attempt to obtain information concerning RMI's and Corporate Underwriters' business matters is of such a sweeping nature and, for the most part, so unrelated to the matter properly under inquiry as to exceed its investigatory power. In the underlying case, the State simply seeks a determination that Petitioners are engaged in the unauthorized business

of selling insurance and/or are not operating under the independently procured insurance statutory exception. In addition, the State seeks the imposition of pre-determined statutory penalties. The confidential information the State requests is completely unnecessary to decide either issue.

The *Tex. Ins. Code*, Art. 1.14-1, § 3(d) provides for a penalty for each act of violation and for each day of violation [Appendix B-5-3]; Article 21.21, § 15(c) also provides for penalties on a per violation basis. [Appendix B-5-5]. The penalties are based on acts and occurrences, which can easily be determined in this case from information other than confidential financial information. It is not necessary for the State to inquire into Petitioners' private financial matters in order to prove their allegations.

Under Texas discovery law, current net worth is relevant to the imposition of exemplary damages, but the law has not been extended to statutory damages as are at issue here. *Lundsford v. Morris*, 746 S.W.2d 471 (Tex. 1988). For example, in another Texas decision, *Lloyd A. Fry Roofing Company v. State*, 524 S.W.2d 313 (Tex. Civ. App.—Dallas 1975, writ ref'd n.r.e.) the court held that where statutory penalties were concerned, evidence of a defendant's general financial condition, when remote from the issue, as here, should not be presented to the jury in the absence of other evidence showing its relevance to the particular violation charged. Wealth in itself should not be material in determining penalties that are assessable on a per-violation basis. In this regard it should be noted that, in addition to seeking simple evidence of the Petitioners' current net worth, the State

is trying to reach back and get all of Petitioners' financial information from January 1985 to the present. Virtually all of the requested financial information is unnecessary to a determination of current net worth.

Further, knowledge of Petitioners' confidential financial matters is immaterial to whether Petitioners are doing business as unauthorized insurers under Texas law or are operating under the independently procured insurance exception. This determination can be adequately made by a review of the contents of the numerous boxes of documents that Petitioners have already produced in this case, specifically including the policies, the policy endorsement statements and summary sheets. The State's request is therefore per se unreasonable under the circumstances.

Reasonableness is the touchstone of the balancing test. *Nixon*, 433 U.S. 425 at 454, 97 S.Ct. at 2796. Unreasonable disclosure of confidential financial information is protected by the Constitution. Here, the State's request is unreasonable because it is unnecessary and immaterial to any of its allegation against Petitioners. The confidential information sought by the State would at best be duplicative of information already in the State's possession. Petitioners' privacy expectations should not be violated merely to obtain duplicative information. There is no justification for requiring Petitioners to produce the same information in a different form. The burden on the Petitioners to produce the financial information greatly outweighs any supposed benefit that the State may obtain by viewing such duplicative information.

The State also contends that the confidential financial information is relevant for purposes of determining certain premium taxes that it alleges are due and owing from Corporate Underwriters under *Tex. Ins. Code*, Art. 1.14-1 § 11 which provides that every unauthorized insurer shall pay a premium receipts tax of 4.85% of the gross premiums charged for such insurance on subjects resident, located or to be performed in Texas. [Appendix B-5-3]. Petitioners contend in the underlying case that they are lawfully engaged in the insurance business pursuant to the independently procured insurance exception of the *Tex. Ins. Code*. Assuming that this exception applies to Petitioners, Article 1.14-1 § 12 provides that the insureds will pay the premium tax. [Appendix B-5-4] The rate of this tax is 3.85% of gross premiums charged. Thus, the tax base for both unauthorized insurance and independently procured insurance is the same. The only difference is the rate. The State has all the information it needs to calculate any premium tax it alleges is due and owing at either rate. The Petitioners have already provided the information necessary to determine the tax because they have identified the 31 Texas insureds in issue. The remaining information necessary is easily obtainable through public records. Each insured makes a tax filing with the Texas Comptroller's office showing the amount of premium taxes paid in order to determine the amount of the tax allegedly owed. The State can determine premiums paid by the insureds in this manner and use this information to calculate the premium tax. Even if Petitioners are subject to a 1% higher tax rate as a result of their alleged status as an unauthorized insurer, the State needs only the information contained in the insureds'

tax filings with the Texas Comptroller showing the amount of premium taxes paid in order to determine the amount of tax allegedly owed. Further, Petitioners have produced policies, policy endorsement statements and policy summary sheets which show the amount of premiums paid for each policy. The ease with which the premium tax can be calculated without the State having unbridled access to Petitioners' confidential financial information weighs heavily against permitting the State to violate Petitioners' right to privacy.

An additional factor in the balance is that there are no allegations by the State that the Petitioners have done anything improper or illegal with any of the monies they have received or that they are not properly paying or adjusting claims. Instead, this case is about whether Petitioners are unauthorized insurers and, therefore, whether they are properly operating under the independently procured insurance exception to the statutory scheme set forth in Article 1.14-1 § 2(b)(4) and § 12 of the *Tex. Ins. Code*. [Appendix B-5-3]. Financial information is not necessary for either of these considerations. A reading of Article 1.14-1 § 2(b)(4) reveals that this question centers instead on where negotiations occur and whether the premium tax payable by the insureds as described above has been accomplished.

Furthermore, the severe criminal penalties that will be suffered by Corporate Underwriters [see discussion below] if it is forced to violate the confidentiality laws of its home jurisdiction cannot fairly be balanced against the State's invasive curiosity about private information for which it has no legitimate need, nor will the sacrifice of Petitioners' constitutional protection further the interests of justice.

For these reasons, the State cannot meet its burden of justifying its proposed invasion of Petitioners' privacy. Sacrifice of a litigant's protection of privacy should be kept to a minimum, and this requires scrupulous limitation of discovery for information furthering justice between the parties which, in turn, can only be information of relevancy and materiality to the matter in controversy. *Maresca v. Marks*, 362 S.W.2d 299 (Tex. 1962). The information the State requests is not relevant and material to the issues in the underlying lawsuit. Mere "fishing" expeditions, such as that being engaged in here by the State, do not justify the unreasonable violation of Petitioners' constitutionally protected privacy rights. Because of the particular, private, confidential nature of this type information, the requesting party should have to show that the confidential information is both relevant and material to the pertinent issue in the case. There has been no legitimate showing by the State that the requested confidential information is both relevant and material to a question at hand. Relevancy and materiality should not be presumed.

Finally, when confidential information is involved, even the hint of harassment should weigh against a party having to produce such information. This is especially the case when the confidential information in question is merely duplicative or cumulative of information already at the requesting party's disposal and certainly should be the case when the confidential information is irrelevant or immaterial. This is exactly the situation in which Petitioners find themselves. The Petitioners' confidential information is immaterial and irrelevant to the issue of whether it is engaged in the unauthorized

business of insurance, and at best the financial information would be duplicative or cumulative of other information at the State's disposal for any issue related to this case. Given the background behind the filing of this case to circumvent Mr. Hancock's Fifth Amendment rights and the illegal receivership obtained to unlawfully convert Petitioners' confidential information, there is substantial evidence that there has been a pattern of harassment by the State against Petitioners. The Petitioners spent substantial time and effort dissolving the State's illegal receivership as soon as possible to protect themselves from the State seizing, duplicating and sending to others all of their private confidential information. It would be an injustice for the Courts to now allow the State to do exactly that in a direct fashion.

II.

THE ORDER COMPELLING THE PRODUCTION OF PETITIONERS' CONFIDENTIAL INFORMATION IS IN DIRECT CONTRAVENTION OF THE CONFIDENTIALITY LAWS OF THE TURKS AND CAICOS ISLANDS

The Honorable John R. Dietz ruled that the net worth of Corporate Underwriters is discoverable and that Corporate Underwriters must produce all responses and responsive financial documents requested by the State, including those objected to by Petitioners. [Appendix E]. Corporate Underwriters seeks relief from the Court from this ruling since to enforce the orders will cause Corporate Underwriters to be in the impossible position of making a Hobson's

choice: violate the Turks and Caicos laws and be subject to criminal penalties and contempt of court or violate Texas discovery rules and be subject to sanction.

Corporate Underwriters' business is subject to regulation by the government of the Turks and Caicos, specifically, Part VII of The Companies Ordinance 1981 ("1981 Ordinance") beginning at § 180. Pursuant to such regulation, Corporate Underwriters may offer to U.S. citizens and other non-Turk and Caicos residents an insurance product prepared and controlled from within the Turks and Caicos. Corporate Underwriters' "objects" are mainly off-shore while the work Corporate Underwriters carries on in the Turks and Caicos is within the scope of § 197 of the ordinance.

Further, every insurance company incorporated in the Islands is extensively regulated by the Insurance Ordinance of 1990 and its accompanying regulations. The purpose of this ordinance and the regulations is to safeguard insureds and to ensure that all insurance companies are capable of effectively representing the interests of all of their policy holders. In addition, the company must show that it is capable of carrying on the business it purports to conduct. Under these regulations, confidential information is disclosed to the insurance supervisor who issues insurance licenses and who is bound by the confidentiality ordinance from disclosing the information. The insurance supervisor will not issue a license unless he is satisfied on all of the issues covered by the Insurance Ordinance of 1990. Corporate Underwriters must operate within the law or be struck from the Turks and Caicos Register of companies and/or have its operations suspended.

Two issues were before Judge Dietz: (i) whether Turks and Caicos law controlled resolution of the issue and the effect of the Order rendered by the Turks and Caicos Supreme Court [Appendix F] and (ii) whether the burden was on the State to prove that on balance with the Turks and Caicos laws it had a legitimate overriding need for the information sought from Corporate Underwriters. Corporate Underwriters provided Judge Dietz with the Turks and Caicos statutes [Appendix B-2] and an Order from the Turks and Caicos Supreme Court [Appendix F] demonstrating the existence, validity and applicability of that jurisdiction's confidentiality ordinances. The Order was the result of Petitioners' voluntary filing with the Supreme Court of the Turks and Caicos Islands a "Summons for Directions" on September 30, 1991 with respect to the discovery propounded upon it by the State of Texas. In addition, Corporate Underwriters showed by the affidavits of a director of and the local attorney for Corporate Underwriters that the disclosure prohibited by the Turks and Caicos laws should be excluded or could be obtained where available from an alternative source located within the State of Texas. The insurance policies and claims documents sought by the State were made available by RMI. Therefore, Corporate Underwriters is objecting primarily to responding to requests regarding Corporate Underwriters' confidential financial information and regarding its officers and directors. According to Turks and Caicos law and the Order, the confidential information cannot be reported.

Specifically, under § 200 of the 1981 Ordinance protection from disclosure of confidential information clearly extends to "all confidential

information with respect to business of a professional nature of an exempted company that arises in or is brought into the Islands and to all persons coming into possession of such information at any time thereafter whether they be within the jurisdiction or thereout." [Appendix B-3-2]. The parties do not dispute that Corporate Underwriters is subject to the jurisdiction and laws of the Turks and Caicos Islands and that it is an exempt company.

It is clear from an analysis of the applicable Turks and Caicos statutes [Appendix B-2] and the Order rendered by that jurisdiction's supreme court that Corporate Underwriters cannot disclose any information that is confidential within the meaning of the 1981 Ordinance without dire consequences. Confidential information is defined in § 199 of the 1981 Ordinance and § 2 of the Confidential Relationships Ordinance 1979 ("1979 Ordinance"). Section 4 of the 1979 Ordinance provides that anyone who divulges confidential information to any person not entitled to the possession of the information shall be guilty of an offense. [Appendix B-2-3]. The penalties for violation of § 4 are severe. Under § 4(3), a person committing an offense under § 4 shall be liable for a fine of $5,000 or to imprisonment for two years or to both. A corporation which violates § 4 is liable for a $25,000 fine. A professional person who violates § 4 is liable for a $10,000 fine or to imprisonment for three years or to both. [Appendix B-2-4]. Section 202 of the 1981 Ordinance is similar, except that where a professional person is convicted the penalties are doubled. [Appendix B-3-6]. Further, a person found guilty of violating the 1981 Ordinance is subject to having his work permit, if any,

revoked and to being deported. For this reason, the Petitioners have no alternative but to seek relief from the United States' highest court.

In light of the staggering consequences that Corporate Underwriters faces, the issue whether Texas law or Turks and Caicos law controls is crucial. This is governed by the Restatement (Third) of Foreign Relations Law ("Restatement") § 442. [Appendix B-4-1]. *McKesson Corp. v. Islamic Republic of Iran*, 138 F.R.D. 1 (D.D.C. 1991). This section of the Restatement and the comments thereto suggest that a higher standard must be met before responses to foreign discovery justify requiring even so much as a good faith effort on Corporate Underwriters' part to secure permission from the foreign jurisdiction to make the information available. In addressing conflict of laws problems that may arise between an international or foreign entity and the law of the United States or a state thereof, the Restatement provides the following format for reconciling the conflict:

> . . .[i]n deciding whether to issue an order directing production of information located abroad and in framing such an order. . . a court in the United States should take into account the importance to the investigation or litigation of the documents or other information requested; the degree of specificity of the request; whether the information originated in the United States; the availability of alternative means of securing the information; and the extent to which non compliance with the request would undermine an important interest of the state or compliance with the request would undermine an important interest of the state where the information is located.

Section 442(2) of the Restatement also provides that:

> If disclosure of information located outside the United States is prohibited by a law, regulations or order of the court, or other authority of the state in which the information or prospective witness is located or of the state of which a prospective witness is a national,
>
> a. a court or agency of the United States may require the person to whom the order is directed to made a good faith effort to secure permission from the foreign authorities to make the information available;
>
> b. a court or agency should not ordinarily impose sanctions of contempt, dismissal or default on a party that has failed to comply with the order for production, excepting cases of deliberate concealment or removal of information or a failure to make a good faith effort in accordance with paragraph "a";
>
> c. a court or agency may, in appropriate cases, make findings of fact adverse to a party that has failed to comply with the order for production, even if that party has made a good faith effort to secure permission from the foreign authorities to make the information available and that effort was unsuccessful. (Emphasis Added)

Corporate Underwriters, as evidenced by the fact that it sought the guidance of the Supreme Court of the Turks and Caicos Islands regarding the discovery requests, made a good faith effort to comply with the requests. Despite this effort, the Supreme Court of the Turks and Caicos ordered Corporate Underwriters to comply with that jurisdiction's confidentiality ordinances. Thus, the State's remedy, at best, is that the court may make findings of fact adverse to Corporate

Underwriters. The Restatement does not provide that production and responses should be compelled.

Further, the burden of establishing what discovery is "necessary to the action, is not otherwise readily attainable, and is directly relevant and material" from a foreign entity shifts to the party requesting the information. Restatement § 442, Comment a; *McKesson Corp.*, 138 F.R.D. at 3. The State did not and cannot meet this burden. There has been no showing that the confidential information was important to the investigation or litigation of the case. Furthermore, many of the requests were overbroad, burdensome or not relevant and in furtherance of the scheme of harassment discussed above. The State had other, less obtrusive, alternative means of securing the information. Non-compliance with the requests would not undermine an important interest of the State but would undermine an important interest of the Turks and Caicos Islands. For these reasons, Corporate Underwriters cannot lawfully be compelled by Judge Dietz to produce its information protected from discovery by the confidentiality ordinances of the Turks and Caicos Islands.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court issue a writ of mandamus in this case to the Honorable John K. Dietz, Presiding Judge of the 250th Judicial District Court of Travis County, Texas in order to prevent the unconstitutional and illegal disclosure of Petitioners' confidential information.

DATED: December 14, 1992.
Austin, Texas

Respectfully submitted,

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APPENDIX A

IN THE COURT OF APPEALS,
THIRD DISTRICT OF TEXAS,
AT AUSTIN

NO. 3-92-284-CV

RISK MANAGERS INTERNATIONAL, INC., ET AL.,
RELATORS

vs.

HONORABLE JOHN K. DIETZ, JUDGE
RESPONDENT

ORIGINAL PROCEEDING FROM TRAVIS COUNTY

ORDER

PER CURIAM

Relators' motion for leave to file petition for writ of mandamus and request for immediate temporary relief is overruled. Tex. R. Civ. P. Ann 121(c) (Pamph. 1992).

It is so ordered this 1st day of July 1992.

[Before Chief Justic Carroll and Justice Aboussie]

Filed: July 1, 1992

[Do Not Publish]

THE SUPREME COURT OF TEXAS
P. O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

September 16, 1992

Mr. Terry L. Scarborough
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RE: Case No. D-2716
Style: RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, INDIVIDUALLY AND AS OFFICER OF RISK MANAGERS INTERNATIONAL, INC.; AND CORPORATE UNDERWRITERS, LTD.

v. THE HONORABLE JOHN K. DIETZ, JUDGE

Dear Counsel:

Today, the Supreme Court of Texas overruled relator's motion for leave to file petition for writ of mandamus in the above styled case. Motion for temporary relief is also overruled. Justice Gammage not sitting.

Sincerely,
John T. Adams, Clerk
by /s/ Blanca E. Morin
Blanca Morin, Deputy

cc: The Hon. John K. Dietz

APPENDIX B

UNITED STATES CONSTITUTION
FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, paper and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

THE TURKS AND CAICOS ISLANDS CONFIDENTIAL RELATIONSHIPS ORDINANCE 1979

Section 2. In this Ordinance, unless the context otherwise requires—

"bank" means any bank or other financial institution to which the provisions of the Banking Ordinance 1979 apply;

"business of a professional nature" includes the relationship between a professional person and his principal, by whatever term the latter may be described, and also the relationship between a bank and a customer of that bank;

"confidential information" includes information concerning any property, or relating to any business of a professional nature or commercial transaction which has taken place, or which any party concerned contemplates may take place, which the recipient thereof is not, otherwise than in the normal course of business or professional practice, authorized by the principal to divulge;

"entitled to possession of confidential information" means so entitled, in the normal course of business or professional practice or by the specific consent of the party who, but for the giving of such consent, would be entitled to require the preservation of the confidentiality of that information;

"Minister" means the person charged for the time being with responsibility for finance;

"normal course of business or professional practice" means the ordinary and necessary routine involved in the efficient carrying out of the instructions of a principal including compliance

with such laws and legal processes as arises out of or in connection therewith and the routine exchange of information between professional persons;

"principal" means a person who has imparted to another person confidential information in the course of his business or professional relationship with that other person, and includes a customer of a bank in relation to his business transactions with that bank;

"professional person" includes an accountant, an attorney (or other legal practitioner by whatever name called), a broker or other kind of commercial agent or adviser, a bank or other financial institution, any public officer or other government official or employee, and such other persons as may be prescribed as being professional persons for the purposes of this Ordinance, and whether or not any such person was licensed or authorized, under any law for the time being in force, to act in that capacity; and also includes any person subordinate to or in the employment or under the control of any such person for the purpose of his professional activities;

"property" includes every present, contingent or future interest or claim, direct or indirect, legal or equitable, positive or negative, in any money or money's worth, real personal moveable or immoveable, rights, charges, and securities thereover and all documents and things evidencing or relating thereto.

Section 3. (1) Subject to the provision of subsection (2), this Ordinance shall apply to all confidential information with respect to business of a professional nature which arises in or is brought into the Islands and to all persons who come into possession of such information

at any time thereafter, whether within or without the Islands.

(2) This Ordinance shall not apply to confidential information given to or received by—

(a) any professional person acting in the normal course of business or professional practice or with consent, express or implied, of the relevant principal;

(b) any person in the course of the taking or giving of evidence, whether within or without the Islands, for the purpose of or in the course of the trial of any person in respect of an alleged criminal offense triable within the Islands or which would have been so triable if it had been committed within the Islands.

(c) a police officer in the execution of his duties whether within or without the Islands, investigating any criminal offence alleged to have been committed within the Islands or which, if it had been committed within the Islands, would have been a criminal offense under the law of the Islands;

(d) the Minister or a person exercising powers of examination or investigation under any of the provision of the Banking Ordinance 1979 or any law repealing or replacing that Ordinance.

Section 4. (1) Subject to the provisions of subsection (2) of section 3, any person who—

(a) being in possession of confidential information, however obtained—

(i) divulges it to any person not entitled to possession thereof; or

(ii) attempts, offers or threatens to divulge it to any person not entitled to possession thereof; or

(b) obtains or attempts to obtain confidential information to which he is not entitled,

shall be guilty of an offence:

Provided that it shall be a defence for a person charged with an offence under this subsection if he proves to the satisfaction of the court that, at the time when he divulged, attempted, offered or threatened to divulge or obtained or attempted to obtain (as the case may be), the confidential information in question, he may be), the confidential information in question, he did not know and did not have reasonable grounds to suspect that so doing would be a breach of an express or implied duty to preserve confidentiality or would be contrary to the provisions of this Ordinance.

(3) Any person who commits an offence under this section shall be liable on summary conviction—

(a) in the case of an individual to a fine of five thousand dollars or to imprisonment for two years or to both such fine and imprisonment; or

(b) in the case of a body corporate to a fine of twenty-five thousand dollars:

Provided that where an offence under this section is committed by a professional person, that person shall be liable on conviction—

(i) in the case of an individual to a fine of ten thousand dollars or to imprisonment for three years or to both such fine and imprisonment; or

(ii) in the case of a body corporate to a fine of fifty thousand dollars.

(4) Any person who is convicted of an offence under subsection (1) and is proved to have solicited, received or offered (as the case may be), on behalf of himself or any other person, any reward for doing the act which constituted the offence, shall be liable, in addition to any penalty imposed under subsection (3), to a further fine equivalent to the amount or value of the reward solicited, received or offered and to forfeit the amount or value of any reward actually received by him.

(5) Where an offence under this section is committed by a body corporate and is proved to the satisfaction of the court to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or similar officer (by whatever name called) of that body corporate, or by any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished accordingly.

(6) For the avoidance of doubt, it is hereby declared that, subject to subsection (2) of the section 3, a bank which gives a credit reference in respect of a customer, without first obtaining the authority of that customer, shall be guilty of an offence under subsection (1).

5. Nothing in this Ordinance shall be deemed to affect or derogate from any rule of law or the rights of any person with regard to the civil liability of any person for any breach of any express or implied condition of confidentiality with regard to any business or professional relations or transactions between them.

6. The Governor may make regulations for carrying into effect the provision of this Ordinance and for prescribing anything which is required to be prescribed under any such provisions.

7. No prosecution shall be instituted under this Ordinance except by or with the written consent of the Attorney General.

TURKS AND CAICOS ISLANDS, THE COMPANIES ORDINANCE, 1981

PART VIII

CONFIDENTIAL RELATIONSHIPS IN RELATION TO EXEMPTED COMPANIES

Section 199. In this Part, unless the context otherwise requires-

"bank" and "financial institution" have the meanings ascribed to them in the Banking Ordinance, 1979;

"business of a professional nature" includes the relationship between a professional person and a principal, however the latter may be described;

"confidential information" includes information concerning any property which the recipient thereof is not, otherwise than in the normal course of business, authorized by the principal to divulge;

"criminal" in relation to an offence means an offence contrary to the criminal law of the Islands;

"Governor" means the Governor in Council;

"normal course of business" means the ordinary and necessary routine involved in the efficient carrying out of the instructions of a principal including compliance with such laws and legal process as arises out of and in connection therewith and the routine exchange of information between licensees;

"principal" means a person who has imparted to another confidential information in the course of the transaction of business of a professional nature;

"professional person" includes a public or government official, a bank, a trust company, an attorney, an accountant, an estate agent, an insurer, a broker and every kind of commercial agent and advisor whether or not answering to the above descriptions and whether or not licensed or authorized to act in that capacity and every person subordinate to or in the employ or control of such person for the purpose of his professional activities;

"property" includes every present, contingent and future interest or claim, direct or indirect, legal or equitable, positive or negative, in any money, moneys worth, realty or personalty, movable or immovable, rights and securities thereover and all documents and things evidencing or relating thereto.

Section 200. (1) Subject to subsection (2), this Part has application to all confidential information with resect to business of a professional nature of an exempted company which arises in or is brought into the Islands and to all persons coming into possession of such information at any time thereafter whether they be within the jurisdiction or thereout.

(2) This Part of this Ordinance has no application to the seeking, divulging or obtaining of confidential information—

(a) in compliance with the directions of the Supreme Court pursuant to section 201;

(b) by or to—

(i) any professional person acting in the normal course of business or with the consent, express or implied, of the relevant principal;

(ii) a police officer of the rank of Inspector or above investigating an offence committed or alleged to have been committed within the jurisdiction;

(iii) a police officer of the rank of Inspector or above, specifically authorized by the Governor in that behalf, investigating an offence committed or alleged to have been committed outside the Islands, which offence, if it had been committed in the Islands, would have been an offence against its laws;

(iv) the Financial Secretary or, in relation to particular information specified by the Governor, such other person as the Governor may authorize;

(v) a bank or financial institution in any proceedings, cause or matter when and to the extent to which it is reasonably necessary for the protection of the bank's interest, either as against its customers or as against third parties in respect of transactions of the bank or financial institution for or with its customers;

(vi) the relevant professional person with the approval of the Financial Secretary when necessary for the protection of himself or any other person against crime;

(c) in accordance with the provisions of this or any other Ordinance.

Section 201. (1) Whenever a person intends or is required to give in evidence in, or in connection with, any proceeding being tried, inquired into or determined by any Court, tribunal or other authority (whether within or without the Islands) of any confidential information within the meaning of this Part of this Ordinance, he shall before so doing apply for directions and any adjournment necessary for that purpose may be granted.

(2) Application for directions under subsection (1) shall be made to, and be heard and determined by a Judge of the Supreme Court sitting alone and *in camera*. At least seven days' notice of any such application shall be given to the Attorney General and, if the Judge so orders, to any person in the Islands who is a party to the proceedings in question. The Attorney General may appear as *amicus curiae* at the hearing of any such application and any party on whom notice has been served as aforesaid shall be entitled to be heard thereon, either personally or by counsel.

(3) Upon hearing an application under subsection (2) a Judge shall direct—

(a) that the evidence be given; or

(b) that the evidence shall not be given; or

(c) that the evidence be given subject to conditions which he may specify whereby the confidentiality of the information is safeguarded.

(4) In order to safeguard the confidentiality of a statement, answer or testimony ordered to be given under subsection (3)(c) a Judge may order—

(a) divulgence of the statement, answer or testimony to be restricted to certain named persons;

(b) evidence to be taken *in camera*;

(c) reference to the names, addresses and descriptions of any particular persons to be by alphabetical letters, numbers or symbols representing such persons, the key to which shall be restricted to persons named by him.

(5) Every person receiving confidential information by operation of subsection (2) is as fully bound by the provisions of this Part of this Ordinance as if such information had been entrusted to him in confidence by a principal.

(6) In consideration what order to make under this section a Judge shall have regard to—

(a) whether such order would operate as a denial of the rights of any person in the enforcement of a just claim;

(b) any offer of compensation or indemnity made to any person desiring to enforce a claim by any person having an interest in the preservation of secrecy under this Part of this Ordinance; and

(c) in any criminal case, the requirements of the interest of justice.

(7) In this section, unless the context otherwise requires—

"court" bears the meaning ascribed to it in section 2 of the Evidence Ordinance;

"given in evidence" and its cognates

means make a statement, answer an interrogatory or testify during or for the *purposes of any proceedings;*

"proceeding" means any court proceeding, civil or criminal and includes a preliminary or interrogatory matter leading to or arising out of a proceeding.

Section 202. (1) Subject to the provisions of section 200 (2), whoever—

(a) being in possession of confidential information however obtained;

(i) divulges it; or

(ii) attempts, offers or threatens to divulge it; or

(b) wilfully obtains or attempts to obtain confidential information, shall be guilty of an offence and ~~liable~~ on summary conviction to a fine of five thousand dollars and to imprisonment for two years.

(2) Whoever commits an offence under subsection (1) and receives or solicits on behalf of himself or another any reward for so doing shall be liable to double the penalty therein prescribed and to a further fine equal to the reward received and also to forfeiture of the reward.

(3) whoever, being in possession of confidential information clandestinely, or without the consent of the principal, makes use thereof for the benefit of himself or another shall be guilty of an offence and on summary conviction liable to the penalty prescribed in subsection (2) and for the purpose any profit accruing to any relevant transaction shall be regarded as a reward.

(4) Whoever being a professional person, entrusted as such with confidential information, the subject of the offence, commits an offence under subsection (1), (2) or (3) shall be liable to double the penalty therein *prescribed*.

(5) For the removal of doubt it is declared that, subject to subsection (2) of section 200, a bank which gives a credit reference in respect of a customer without first receiving the authorization of that customer shall be guilty of an offence under subsections (1) and (4).

RESTATEMENT (THIRD) FOREIGN RELATIONS LAW

Section 442. Requests for Disclosure: Law of the United States

(1) (a) A court or agency in the United States, when authorized by statute or rule of the court, may order a person subject to its jurisdiction to produce documents, objects, or other information relevant to an action or investigation, even if the information or the person in possession of the information is outside the United States.

(b) Failure to comply with an order to produce information may subject the person to whom the order is directed to sanctions, including finding of contempt, dismissal of a claim or defense, or default judgment, or may lead to a determination that the facts to which the order was addressed are as asserted by the opposing party.

(c) In deciding whether to issue an order directing production of information located aborad, and in framing such an order, a court or agency in the United States should take into account the importance to the investigation or litigation of the documents or other information requested; the degree of specificity of the requires; whether the information originated in the United States; the availability of alternative means of securing the information; and the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located.

(2) If disclosure of information located outside the United States is prohibited by a law, regulation, or order of a court or other authority of the state in which the information or

prospective witness is located, or of the state of which a prospective witness is a national,

(a) a court or agency in the United States may require the person to whom the order is directed to make a good faith effort to secure permission from the foreign authorities to make the information available;

(b) a court or agency should not ordinarily impose sanctions of contempt, dismissal, or default on a party that has failed to comply with the order for production, except in cases of deliberate concealment or removal of information or of failure to make a good faith effort in accordance with paragraph (a);

c) a court or agency may, in appropriate cases, make findings of fact adverse to a party that has failed to comply with the order for production, even if that party has made a good faith effort to secure permission from the foreign authorities to make the information available and that effort has been unsuccessful.

Comment:

a. Discovery as exercise of jurisdiction. Discovery for use in a judicial or administrative proceeding is an exercise of jurisdiction by a state, whether it emanates from an order of a court or from a demand by a party pursuant to a statute or rule of practice. In order to ensure that such exercise of jurisdiction is carried out consistently with the principal reasonableness (§§ 403, 421), Subsection (1) contemplates that, in civil litigation in the United States affecting foreign interests, courts control discovery practice from the outset of the litigation pursuant to Rule 16 of the Federal Rules of Civil Procedure and comparable State rules. Thus, except as specifically authorized by statute or rule of court, Reporters' Note 3, requests to produce documents or information located abroad should, as a matter of good practice, be issued as an order by the court, not merely in the form of a demand by a private party. General authorizations to litigants, as under Rule 34 of the Federal Rules of Civil Procedure, should not be construed to support departure from this practice.

Before issuing an order for production of documents, objects, or information located abroad, the court—or, where authorized, the agency—should scrutinize a discovery request more closely than it would scrutinize comparable requests for information located in the United States. Under Rule 26(b)(1) of the Federal Rules of Civil Procedure, discovery (including requests for documents) may extend to any matter not privileged which is relevant to the subject matter of the action, even if the information sought would be inadmissible at trial, if it appears reasonably calculated to lead to the discovery of admissible evidence. However, the second paragraph of the Rule, added in 1983, calls for imposition by the court of limits on the extent of discovery comparable to those set out in Subsection (1)(c). Given the difficulty in obtaining compliance, and the resistance of foreign states to discovery demands originating in the United States, it is ordinarily reasonable to limit foreign discovery to information necessary to the action—typically, evidence not otherwise readily obtainable—and directly relevant and material. Requests for information that could lead to admissible evidence would ordinarily not be granted under this standard, but a court might in some instances order disclosure of the identity and location of persons who may have knowledge of such information. Nothing in this section prevents parties from making disclosure of information without court intervention.

Typically, discovery requests and orders are addressed to parties before the court or agency, *i.e.*, to persons as to whom jurisdiction to adjudicate is not challenged or has been determined to exist. Discovery requests and orders may be addressed to non-parties within the United States as well. See Fed.R.Civ.P. 45 and corresponding State rules. for subpoenas issued to persons outside the United States, see Comment b and § 474, Reporters' Note 11. Discovery may be ordered also in aid of determining jurisdiction to adjudicate. See Reporters' Note 11.

This section deals with efforts to secure information under direct order of a United States court or comparable authority. For means to secure evidence located abroad through international judicial assistance, see §§ 473-74.

Art. 1.14—1. Unauthorized Insurance

Insurance business defined

Sec. 2. (a) Any of the following acts in this state effected by mail or otherwise is defined to be doing an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term insurer as used in this Article includes all corporations, associations, partnerships and individuals engaged as principals in the business of insurance and also includes interinsurance exchanges, mutual benefit societies, and insurance exchanges and syndicates as defined by rules promulgated by the State Board of Insurance.

1. The making of or proposing to make as an insurer, an insurance contract.

2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.

3. The taking or receiving of any application for insurance.

4. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof.

5. The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.

6. Directly or indirectly acting as an agent for other otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subdivision shall not operate to prohibit full-time salaried employees of

a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer.

7. Contracting to provide indemnification or expense reimbursement in this state to persons domiciled in this state or for risks located in this state, whether as an insurer, agent, administrator, trust, funding mechanism, or by any other method, for any type of medical expenses including, but not limited to surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether this coverage is by direct payment, reimbursement, or otherwise. This provision shall not apply to:

(i) any program otherwise authorized by law that is established by any political subdivision of this state or under the provisions of The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes) or by a state agency; or

(ii) a multiple employer welfare arrangement which is fully insured as defined in 29 U.S.C.A. Section 1144(b)(6) except that the Commissioner may apply any laws that regulate the business of insurance in this state to the extent that such laws provide (1) standards requiring the maintenance of specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and (2) provisions to enforce such standards.

8. The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance.

9. The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes.

10. Any other transactions of business in this state by an insurer.

11. With respect to policies authorized under Article 3.74 of this code, the use, creation, publication, mailing, or dissemination of an advertisement relating to any of the acts defined in this subsection to be doing an insurance business unless:

(i) that advertisement is used, created, published, mailed, or disseminated on behalf

of a person or insurer authorized under this title to engage in the business of insurance in this state, who has actual knowledge of the content of the advertisement and has authorized the advertisement to be used, created, published, mailed, or disseminated on that person's or insurer's behalf; and

(b) The provisions of this section do not apply to: ...

4. Transactions involving contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid in accordance with this Article.

Unauthorized insurance prohibited

Sec. 3. ...

(d) A person or entity who violates any provision of this Article is subject to a civil penalty of not more than $10,000 for each act of violation and for each day of violation to be recovered as provided in this section.

Unauthorized insurance premium tax

Sec. 11. (a) Except as to premiums on lawfully procured surplus lines insurance and premiums on independently procured insurance on which a tax has been paid pursuant to this Article or Article 1.14—2, every unauthorized insurer shall pay to the State Board of Insurance before March 1 next succeeding the calendar year in which the insurance was so effectuated, continued or renewed a premium receipts tax of 4.85 percent of gross premiums charged for such insurance on subjects resident, located or to be performed in this state. Such insurance on subjects resident, located or to be performed in this state procured through negotiations or an application, in whole or in part occurring or made within or form within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured, or continued or renewed in this state. The term "premium" includes all premiums, membership fees, assessments, dues and any other consideration for insurance. Such tax shall be in lieu of all other insurance taxes. On default of any such unauthorized insurer in the payment of such tax the insured shall pay the tax. If the tax prescribed

by this subsection is not paid within the time stated, the tax shall be increased by a penalty of 25 percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date such payment was due to the date paid.

(b) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premiums which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states.

Independently procured insurance

Sec. 12. (a) Every insured who procures or causes to be procured or continues or renews insurance with any unauthorized insurer, or any insured or self-insurer who so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus lines agent pursuant to the surplus lines law of this state shall within 60 days after the date such insurance was so procured, continued or renewed, file a report of the same with the State Board of Insurance in writing and upon forms designated by the State Board of Insurance and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the State Board of Insurance.

(b) Any insurance in an unauthorized insurer of a subject of insurance resident, located or to be performed within this state procured through negotiations or an application, in whole or in part occurring or made within or from within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured, or continued or renewed in this state within the intent of Paragraph (a).

(c) There is hereby levied upon the obligation, chose in action, or right represented by the premium charged for such insurance,

a premium receipts tax of 3.85 percent of gross premiums charged for such insurance. The term "premium" shall include all premiums, membership fees, assessments, dues and any other consideration for insurance. Such tax shall be in lieu of all other insurance taxes. The insured shall, before March 1 next succeeding the calendar year in which the insurance was so procured, continued or renewed, pay the amount of the tax to the State Board of Insurance. In event of cancellation and rewriting of any such insurance contract the additional premium for premium receipts tax purposes shall be the premium in excess of the unearned premium of the canceled insurance contract.

(d) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states.

(e) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the State Board of Insurance within the time stated in Paragraph (c). If the tax prescribed by this subsection is not paid within the time stated in Paragraph (c), the tax shall be increased by a penalty of 25 percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date such payment was due to the date paid.

(f) The Attorney General, upon request of the State Board of Insurance, shall proceed in the courts of this or any other state or in any federal court or agency to recover such tax not paid within the time prescribed in this section.

(g) This section shall not be construed or deemed to abrogate or modify any provision of this Article. This section does not apply as to individual life or individual disability insurance.

Sec. 15. (c) In addition to the request for a temporary or permanent injunction in a proceeding brought under Subsection (a) of this section, the Attorney General, on a finding by the court that the defendant has engaged or is engaging in a practice declared to be unlawful by Article 17.46 of the Business & Commerce Code, as amended, this Article, or rules or regulations issued under this Article, may request a civil penalty of not more than $10,000 per violation.

APPENDIX C

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE,	§	IN THE DISTRICT COURT
Plaintiffs,	§	
vs.	§	OF TRAVIS COUNTY, TEXAS
RISK MANAGERS INTERNATIONAL, INC. HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD.,	§	
Defendants.	§	299TH JUDICIAL DISTRICT

ORDER OF MARCH 10, 1992
REGARDING THE DISCOVERY OF
FINANCIAL INFORMATION OF
DEFENDANT RISK MANAGERS INTERNATIONAL, INC.

On the 10th day of March, 1992, in the above-styled and numbered cause came before this Court The State of Texas and the State Board of Insurance ("plaintiffs") and Risk Managers International, Inc., Corporate Underwriters, Ltd. and Herschel Hancock, each

appearing by and through their counsel of record. Counsel for Nyle Large had notice of the hearing but did not appear. The Court, having heard and considered Risk Managers International, Inc.'s ("defendant") objections to the discovery of certain information concerning defendant's financial condition and having heard plaintiff's arguments in response, is of the opinion that defendant's objections should be denied.

It is hereby ORDERED, ADJUDGED and DECREED that:

1. At this time this Court is not ordering the production of federal income tax returns, 1099 forms, 940 forms, 941 forms and W-2s, and work papers used in computing those tax returns. Specifically:

1) Defendant Risk Managers International, Inc. is ORDERED to answer the following Interrogatories propounded by the plaintiffs:

INTERROGATORY NO. 11:

Identify any and all premiums, which were received by Risk Managers International, Inc. with respect to risks resident, located, or to be performed in Texas for insurance policies for was represented to be the insurer.

INTERROGATORY NO. 13:

Identify all non-employee accountants and/or bookkeepers retained by Risk Managers International, Inc. from January, 1985 through the present.

INTERROGATORY NO. 14:

For each accountant and/or bookkeeper identified in interrogatory no. 13, state the exact purpose for which they were retained, such as, but not limited to, preparation of income tax returns, audits, financial statements, etc.

INTERROGATORY NO. 15:

Identify all bank, and/or savings and loan accounts of any type held in the name of and/or for the benefit of Risk Managers International, Inc. from January 1, 1985 to the present, giving the name and address of each financial institution and the account number.

INTERROGATORY NO. 16:

State the net worth of Risk Managers International, Inc. for each year from 1985 to the present.

INTERROGATORY NO. 24:

Identify each and every person who has received commission(s) or any type of compensation from Risk Managers International, Inc. with respect to the business of insurance from January 1, 1985, to the present where the risks are resident, located, or to be performed in Texas and for which Corporate Underwriters, Ltd. was represented to be the insurer.

INTERROGATORY NO. 29:

List any and all premiums, received by Risk Managers International, Inc. which were sent to Corporate Underwriters, Ltd. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

2) Defendant Risk Managers International, Inc. is ORDERED to produce for inspection to the Plaintiffs in Dallas, Texas the following documents for the time period January 1, 1985 to the present; to-wit:

PRODUCTION REQUEST NO. 1:

All documents relating to money paid or owed to any person or entity who solicited or aided in soliciting insurance coverage for you

with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

PRODUCTION REQUEST NO. 2:

All documents relating to the receipt of money by you for insurance coverage sold to any person or entity located in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

PRODUCTION REQUEST NO. 4:

All documents relating to claims paid for insurance coverage sold to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer.

PRODUCTION REQUEST NO. 5:

All documents relating to expenses, commissions, fees, taxes and other costs related to insurance coverage sold to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer.

PRODUCTION REQUEST NO. 6:

All correspondence from any person or entity relating to insurance coverage marketed to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer. This request includes, but is not limited to, correspondence to or from insureds; correspondence to or from insurance agents; correspondence to or from prospective purchasers; and correspondence to or from any agent, employee, or officer of Risk Managers International, Inc., or Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 8:

Any and all documents reflecting disbursements in cash, check, or wire transfer between Corporate Underwriters, Ltd. and Risk Managers International, Inc. regarding the solicitation and/or procurement of insurance to any risk resident, located, or to be performed in Texas.

PRODUCTION REQUEST NO. 9

All documentary material regarding the financial net worth of Risk Managers International, Inc. from 1985 to the present including

but not limited to financial statements, audits, compilations, and/or loan applications.

PRODUCTION REQUEST NO. 10:

All documentary material concerning or relating to the payment of salaries, expenses or other compensation for Risk Managers International, Inc., its agents, officers, directors and employees paid by Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 11:

All documentary material reflecting the sale or purchase of assets for investment, for use as equipment, supplies, or other business purposes of Risk Managers International, Inc.

PRODUCTION REQUEST NO. 12:

All documentary material concerning or in any way relating to any income or receipts earned on the assets, investments or property of Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 13:

All documentary material concerning or in any way relating to any payments either by check, in cash, wire transfer or property, either real or personal, made to Risk Managers International, Inc., in connection with any agreement pertaining to insurance involving Corporate Underwriters, Ltd., Inc.

PRODUCTION REQUEST NO. 19:

Any documentary material relating to claims paid by Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

PRODUCTION REQUEST NO. 20:

All documentary material relating to the renewal of insurance coverage issued with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd., or Risk Managers International, Inc. was represented to be the insurer. This request includes but is not limited to: correspondence, policies, endorsements, and premium checks.

PRODUCTION REQUEST NO. 21:

All documentary material relating to any new insurance coverage issued with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer. This request includes but is not limited to: correspondence, policies, endorsements, and premium checks.

PRODUCTION REQUEST NOS. 23 THROUGH 52:

To the extent that requests for document production numbers 23 through 52 request the production of financial information relating to the specific persons or entities identified.

PRODUCTION REQUEST NO. 53:

All documents which demonstrate any and all premium dollars obtained by or sent to Corporate Underwriters, Ltd. by anyone insured by Corporate Underwriters, Ltd. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

PRODUCTION REQUEST NO. 54:

All documents which demonstrate any and all premium dollars obtained by or sent to Risk Managers International, Inc. by anyone insured by Corporate Underwriters, Ltd. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

PRODUCTION REQUEST NO. 59:

All documents that are bank statements for accounts in the name of or for the benefit of Risk Managers International, Inc. or Corporate Underwriters, Ltd. pertaining to any funds or other compensation received from the sale of insurance with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

PRODUCTION REQUEST NO. 60:

All records of any bank account held in Texas in the name of or for the benefit of Risk Managers International, Inc. or Corporate Underwriters, Ltd. pertaining to any funds or other compensation received from the sale of insurance with respect to risks resident,

located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc., was represented to be the insurer.

2. Defendant is further ordered to produce to the Court for in-camera inspection any and all insurance claims files and portions of insurance claims files that are in litigation or where litigation is anticipated for risk, resident, located or to be performed in Texas which the defendant asserts are privileged under Texas Rule of Civil Procedure 166b.

3. Defendant and plaintiffs are further ordered to produce to the Court for in-camera inspection the documents which have been requested by plaintiffs or defendants pursuant to their respective discovery requests on the other that either the defendant or the plaintiffs assert are privileged as witness statements, attorney-client communications, party communications, attorney work product, or trade secrets.

SIGNED, this the 15th day of May, 1992, NUNC PRO TUNC March 10, 1992.

/s/ John K. Dietz
JUDGE JOHN K. DIETZ

AGREED AS TO FORM:

/s/ Linda Ibach Shaunessy
LINDA IBACH SHAUNESSY
Attorney for Plaintiffs

/s/ Terry Scarborough
TERRY SCARBOROUGH
Attorney for Risk Managers International, Inc.

C-2-1

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE,	§	IN THE DISTRICT COURT
Plaintiffs,	§	
vs.	§	OF TRAVIS COUNTY, TEXAS
RISK MANAGERS INTERNATIONAL, INC. HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD.,	§	
Defendants.	§	299TH JUDICIAL DISTRICT

ORDER OF MARCH 10, 1992 REGARDING THE DISCOVERY OF FINANCIAL INFORMATION OF DEFENDANT HERSCHEL HANCOCK

On the 10th day of March, 1992, in the above-styled and numbered cause came before this Court The State of Texas and the State Board of Insurance ("Plaintiffs") and Risk Managers International, Inc., Corporate Underwriters, Ltd. and Herschel Hancock, each

appearing by and through their counsel of record. Counsel for Nyle Large had notice of the hearing but did not appear. The Court, having heard and considered Herschel Hancock's ("Defendant") objection to the discovery of certain information concerning Defendant's Objections should be denied.

It is hereby ORDERED, ADJUDGED and DECREED that:

1. At this time this Court is not ordering the production of federal income tax returns, 1099 forms, 940 forms, 941 forms and W-2s and work papers used in computing those tax returns. Subject to Herschel Hancock's objection to discovery based on his assertion of Fifth Amendment privilege as made applicable to the States by the Fourteenth Amendment and Sections 9 and 10 of Article I of the Texas Constitution, hereinafter "Fifth Amendment", which objection will be determined by this Court at a later date, the Court hereby orders the following:

1) Defendant, Herschel Hancock, is ORDERED to answer the following Interrogatories propounded by the Plaintiffs; to-wit:

INTERROGATORY NO. 5:
Please state the social security number Herschel Hancock.

INTERROGATORY NO. 6:
Identify each person from whom you or your attorney, agent, or representative have obtained any written or recorded statement or report regarding the facts relating to this lawsuit,

and identify the persons having custody or control of such statements and reports. This request includes, but is not limited to:

a) any written statement signed or otherwise adopted or approved by the person making it; and

b) any stenographic, mechanical, electrical, or other type of recording, or any transcription thereof which is a substantially verbatim recital of a statement made by the person and contemporaneously recorded.

INTERROGATORY NO. 7:
State the complete address (street address, city, county and state) of each place where you have lived since January 1, 1985 to the present.

INTERROGATORY NO. 11:
Identify any and all premiums and other consideration which were received by Risk Managers International, Inc. with respect to risk resident, located, or to be performed in Texas for which Corporation Underwriters, Ltd. was represented to be the insurer.

INTERROGATORY NO. 13:
Identify all accountants and/or bookkeepers retained by Herschel Hancock from January 1985, through the present.

INTERROGATORY NO. 14:
For each accountant and/or bookkeeper identified in Interrogatory No. 13, state the exact purpose for which they were retained, such as, but not limited to, preparation of federal income tax returns, audits, financial statements, etc.

INTERROGATORY NO. 15:
State the net worth of Herschel Hancock for each year from 1985 to the present.

INTERROGATORY NO. 16:
State the net worth of Risk Managers International, Inc. for each year from 1985 to the present.

INTERROGATORY NO. 17:
State the total amount of money which was received by Herschel Hancock as salary, commissions, dividends, stock options, stocks, bonds, automobiles, house(s), mortgage payments, credit card payments, real estate, and/or bonuses from Risk Managers International, Inc. and/or Corporate Underwriters, Ltd.

INTERROGATORY NO. 18
Identify all commissions received or due to be received by you from the sale of insurance policies for Corporate Underwriters, Ltd. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

INTERROGATORY NO. 18a:
For each commission(s) identified in Interrogatory No. 18, identify the client/insured for whom the commission is to be or was paid the dollar amount of the commission, and whether the commission was actually paid.

INTERROGATORY NO. 23
Identify each and every person and/or entity in the State of Texas who has received insurance commission(s) or any type of compensation from Risk Managers International, Inc. from January 1, 1985, for the sale of insurance with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

INTERROGATORY NO. 25:
Identify what documents were used to calculate your answer to Interrogatory No. 15.

INTERROGATORY NO. 26:
Identify what documents you used to calculate your answer to Interrogatory No. 16.

Subject to Herschel Hancock's objection to discovery based on his assertion of Fifth Amendment privilege, which objection will be

determined by this Court at a later date Defendant, Herschel Hancock, is ORDERED to produce for inspection to the Plaintiffs in Dallas, Texas the following documents for the time period January 1, 1985 to the present; to-wit:

PRODUCTION REQUEST NO. 1:
All documents relating to money paid or owed to any person or entity who solicited or aided in soliciting insurance coverage for or with you with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters was represented to be the insurer.

PRODUCTION REQUEST NO. 2:
All documents relating to the receipt of money by you for insurance coverage sold by Risk Managers International, Inc. To any person or entity located in Texas for which Corporate Underwriters, Ltd. Was represented to be the insurer.

PRODUCTION REQUEST NO. 4:
All documents relating to claims paid for insurance coverage sold to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer.

PRODUCTION REQUEST NO. 5:
All documents relating to expenses, commissions, fees, taxes and other costs related to insurance coverage sold to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer.

PRODUCTION REQUEST NO. 6:
All correspondence to or from any person or entity relating to insurance coverage marketed to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer. This request includes, but is not limited to, correspondence to or from insureds; correspondence to or from

insurance agents' correspondence to or from any agent employee, or officer of Risk Managers International, Inc. or Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 8:
Any and all documents reflecting disbursements in cash, check, or wire transfer between Herschel Hancock and Corporate Underwriters, Ltd. and/or Risk Managers International, Inc. regarding the solicitation and/or procurement of insurance to any risk resident, located, or to be performed in Texas.

PRODUCTION REQUEST NO. 9
Any and all documentary material concerning or reflecting any deposit either in interest or non-interest bearing accounts of any financial institution, including any bank, or savings and loan, made by Risk Managers International, Inc. from 1985 to the present.

PRODUCTION REQUEST NO. 10:
All documentary material concerning or relating to the payment of salaries, expenses or other compensation for Risk Managers International, Inc., its agents, officers, directors and employees paid by Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 13:
All documentary material concerning or in any way relating to any payments either by check, in cash, wire transfer, or property, either real or personal, made to Risk Managers International, Inc., in connection with any agreement pertaining to insurance involving Corporate Underwriters, Inc.

PRODUCTION REQUEST NO. 19:
any documentary material relating to claims paid by Risk Managers International, Inc., and/or Corporate Underwriters, Ltd., to Texas residents and/or entities entitled to do business in Texas or on behalf of an insured residing or located in Texas with respect to insurance policies where Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

PRODUCTION REQUEST NO. 20:
All documentary material relating to the renewal of insurance coverage issued to Texas residents and/or entities entitled to do business in Texas by or through Risk Managers International, Inc. and/or Corporate Underwriters, Ltd. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer. This request includes but is not limited to: correspondence, policies, endorsements,a nd premium checks.

PRODUCTION REQUEST NO. 21:
All documentary material relating to any new insurance coverage issued to Texas residents and/or entities entitled to do business in Texas by or through Risk Managers International, Inc. and/or Corporate Underwriters, Ltd. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer. This request includes but is not limited to: correspondence, policies, endorsements, and premium checks.

PRODUCTION REQUEST NO. 23 THROUGH 52:
To the extent that requests for document production numbers 23 through 52 request the production of financial information relating to the specific persons or entities identified.

PRODUCTION REQUEST NO. 54:
All documents which demonstrate any and all premium dollars obtained by or sent to Risk Managers International, Inc. by anyone insured by Corporate Underwriters, Ltd. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

PRODUCTION REQUEST NO. 60:
All reports, audits, balance sheets, annual statements, and/or any documents of any type relating to the financial net worth of Risk Managers International, Inc. and/or Herschel Hancock from January 1, 1985 to the present.

PRODUCTION REQUEST NO. 61:
All documents relating to Risk Managers International, Inc.'s funds, including capital reserve, or assets available for payment of insurance claims which are pending, or may occur in the future for the years 1985 through the present date with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

PRODUCTION REQUEST NO. 62:
All documents relating to money paid or accounted for as "consultant fees" by Risk Managers International, Inc. for the years 1985 through the present date with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

PRODUCTION REQUEST NO. 63
All documents relating to dividends paid or declared by Risk Managers International, Inc. or other payments made to stockholders by Risk Managers International, Inc. for the years 1985 through the present date.

PRODUCTION REQUEST NO. 64:
All documents relating to any compensation, benefit, or thing of value given or loaned to Herschel Hancock, Candace Hancock, or Michael Hancock by Risk Managers International, Inc. and/or Corporate Underwriters, Ltd. for the years 1985 through the present date.

PRODUCTION REQUEST NO. 65
All documents relating to financial statements and the financial net worth of Risk Managers International, Inc. for the years 1985 through the present date.

PRODUCTION REQUEST NO. 67:
All work papers and documents used in support of audits, compilations, reviews, management letters, or consultations relating to Risk Managers International, Inc. for the period 1985 through the present date.

PRODUCTION REQUEST NO. 69:

All documents relating to money paid or owed to any person or entity who solicited or aided in soliciting insurance coverage on behalf of Corporate Underwriters, Ltd., and/or Risk Managers International, Inc. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

PRODUCTION REQUEST NO. 76:
All documentary material concerning or in any way relating to any compensation for Risk Managers International, Inc. made to Herschel Hancock.

PRODUCTION REQUEST NO. 86:
All documentary material concerning or in any way relating to any payments either by check, cash, wire transfer, and/or property, either real or personal, made to Corporate Underwriters, Ltd., in connection with any insurance agreement involving Risk Managers International, Inc.

2. Defendant is further ordered to produce to the Court for in-camera inspection any and all insurance claims files and portions of insurance claims files that are in litigation or where litigation is anticipated for risks, resident, located or to be performed in Texas which the Defendant asserts are privileged under Texas Rule of Civil Procedure 166b. The production is subject to Herschel Hancock's objection to discovery based on his assertion of Fifth Amendment privilege, which objection will be determined by this Court at a later date.

3. Defendant and Plaintiffs are further ordered to produce to the Court for in-camera inspection the documents which have been

requested by Plaintiffs or Defendants pursuant to their respective discovery requests on the other that either the Defendant or the Plaintiffs assert are privileged as witness statements, attorney-client communications, party communications, attorney work product, or trade secrets.

SIGNED this the 15th day of May, , 1992, NUNC PRO TUNC March 10, 1992.

/s/ John K. Dietz
JUDGE JOHN K. DIETZ
Presiding Judge

AGREED AS TO FORM:

/s/ Linda Ibach Shaunessy
LINDA IBACH SHAUNESSY
Attorney for Plaintiffs

/s/ Alicia Curran
ALICIA CURRAN
Attorney for Herschel Hancock

APPENDIX D

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE,	§	**IN THE DISTRICT COURT**
Plaintiffs,	§	
vs.	§	**OF TRAVIS COUNTY, TEXAS**
RISK MANAGERS INTERNATIONAL, INC. HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD.,	§	
Defendants.	§	**299TH JUDICIAL DISTRICT**

ORDER DENYING MOTION FOR RECONSIDERATION

RE: OBJECTIONS OF DEFENDANT CORPORATE UNDERWRITERS, LTD., TO PLAINTIFF STATE OF TEXAS' FIRST AMENDED INTERROGATORIES AND PRODUCTION REQUEST AND SECOND AMENDED SET OF REQUESTS FOR ADMISSIONS.

On the 14th day of April, 1992, came on to be considered Defendant Corporate Underwriters, Ltd.'s (hereinafter "Corporate")

Motion for Reconsideration of the decision announced from the bench by the Court that Corporate is to tender for in-camera inspection pursuant to Rule 166(b)(4) of the Texas Rules of Civil Procedure documents and responses in response to Plaintiff State of Texas' First Amended Interrogatories and Production Request and Second Amended set of Requests for Admissions.

Having considered the motion, supporting affidavits and the argument of counsel the Court is of the opinion that such Motion for Reconsideration should be denied.

IT IS THEREFORE ORDERED that Corporate's Motion for Reconsideration of the decision announced from the bench by the Court on March 10, 1992 that Corporate is to tender for in-camera inspection pursuant to Rule 166(b)(4) of the Texas Rules of Civil Procedure documents and responses in response to Plaintiff State of Texas' First Amended Interrogatories and Production Request and Second Amended Set of Requests for Admissions be, in all things, DENIED.

SIGNED AND ENTERED THIS 14th day of April, 1992, by:

/s/ John K. Dietz
JUDGE JOHN K. DIETZ
PRESIDING

APPENDIX E

STATE OF TEXAS' INTERROGATORIES AND REQUESTS FOR PRODUCTION

PRODUCTION REQUEST NO. 1:

All documents relating to money paid or owed to any person or entity who solicited or aided in soliciting insurance coverage for you.

PRODUCTION REQUEST NO. 2:

All documents relating to the receipt of money by you for insurance coverage sold to any person or entity located in Texas.

PRODUCTION REQUEST NO. 3:

All documents relating to claims made against insurance coverage sold to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer.

PRODUCTION REQUEST No. 4:

All documents relating to claims paid for insurance coverage sold to any person or entity located in Texas for which Risk Managers International, Inc., or corporate Underwriters, Ltd., was the insurer.

PRODUCTION REQUEST NO. 5:

All documents relating to expenses commissions, fees, taxes and other costs related to insurance coverage sold to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer.

PRODUCTION REQUEST NO. 7:

Any and all documents which are certificates of incorporation, by-laws, and minutes of board of directors meetings of Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 8:

Any and all documents reflecting disbursements in cash, check, or wire transfer between Corporate Underwriters, Ltd., and Risk Managers International, Inc.

PRODUCTION REQUEST NO. 9:

All documentary material concerning or reflecting any deposits either in interest or non-interest bearing accounts of any financial institution, including any bank, or savings and loan, made by Risk Managers International, Inc. for or on behalf of Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 10:

All documentary material concerning or relating to the payment of salaries, expenses or other compensation for Risk Managers International, Inc., its agents, officers, directors and employees paid by Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 11:

All documentary material reflecting the sale or purchase of assets for investment, for use as equipment, supplies, or other business purposes of Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 12:

All documentary material concerning or in any way relating to any income or receipts earned on the assets, investments or property of Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 13:

All documentary material concerning or in any way relating to any payments either by check, in cash, wire transfer or property, either real or personal, made to Risk Managers International, Inc., in connection with any insurance agreement involving Corporate Underwriters, Inc.

PRODUCTION REQUEST NO. 14:

Any and all insurance treaties or contracts or any other agreement(s) between Risk Managers International, Inc., Herschel Hancock, Nyle Large, Hugh Thompson, and/or Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 18:

Any documentary material relating to claims made by Texas residents and/or entities entitled to do business in Texas or pursuant to any policy or coverage issued to a Texas resident, against Risk Managers International, Inc. and/or Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 19:

Any documentary material relating to claims paid by Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., to Texas residents and/or entities entitled to do business in Texas or on behalf of an insured residing or located in Texas.

PRODUCTION REQUEST NO. 53:

All documents which demonstrate any and all premium dollars obtained by or sent to CU by anyone insured by CU.

PRODUCTION REQUEST NO. 54:

All documents which demonstrate any and all premium dollars obtained by or sent to RMI by anyone insured by CU.

PRODUCTION REQUEST NO. 55:

All documents which demonstrate any and all premium dollars obtained by or sent to CU by anyone insured by RMI.

PRODUCTION REQUEST NO. 56:

All documents which demonstrate any and all premium dollars obtained by or sent to RMI by anyone insured by RMI.

INTERROGATORIES

INTERROGATORY NO. 7:

Identify all insurance claims made by Texas insured for Corporate Underwriters, Ltd. insurance policies.

INTERROGATORY NO. 8:

Identity individually as to each claim identified in Interrogatory No. 7 as to whether it was paid, denied, or is still under review. If the claim was paid, identify the claimant, and state the claimant's bank account number and bank name under which the claim was paid. If the claim is still under review, identify the claimant and the reasons why the claim has not been paid. If the claim was denied, identify the claimant and state the reason why the claim was denied.

INTERROGATORY NO. 10:

Identify all agreements or contracts whether oral or written which Corporate Underwriters, Ltd. entered into with Risk Managers International, Inc., and state the substance and date of each such agreement.

INTERROGATORY NO. 11:

State the total amount of premiums, fees, and other consideration which was paid to Corporate Underwriters, Ltd. by Texas residents or Texas insureds for any Corporate Underwriters, Ltd. insurance policies.

INTERROGATORY NO. 16:

Identify all investments made by Corporate Underwriters, Ltd. from October 1984 through the present. The term investments shall not be limited to but shall include purchases of corporate stock, purchases or

mutual funds, acquisition of partnership or proprietorship interests, deposits in money market funds, purchases of real estate, bond purchases, and corporate loans.

INTERROGATORY NO. 17:

State the total amount of premiums, commissions, membership fees, assessments, dues, and other consideration received by Corporate Underwriters, Ltd. for any insurance coverage issued by Corporate Underwriters, Ltd. to residents of the State of Texas.

INTERROGATORY NO. 18:

List the total liability limits of each insurance policy, as well as the type of insurance policy issued to a Texas resident or Texas domiciliary by Corporate Underwriters, Ltd.

INTERROGATORY NO. 19:

Identify each person or entity you contend may be responsible for paying any part of workers compensation insurance claims for policies sold by or through Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., in Texas.

INTERROGATORY NO. 20:

For any person or entity identified in answer to interrogatory No. 19, state the reason(s) you contend they may be responsible and all facts supporting your contention.

INTERROGATORY NO. 24:

Identify each and every person and/or entity in the State of Texas who has received commission or any type of compensation from Corporate Underwriters, Ltd. from January 1, 1985 to the present and the amount of compensation received by each.

INTERROGATORY NO. 25:

Describe any and all information known to you about Transworld Reinsurers Ltd. of the Turks
and Caicos Islands, British West Indies.

INTERROGATORY NO. 27:

Describe the exact nature of the business and/or legal relationship between Corporate Underwriters, Ltd. and Transworld Reinsurers, Ltd. of the Turks and Caicos Islands, British West Indies.

INTERROGATORY NO. 30:

List any and all premiums, commissions, fees, and/or any kind of renumeration (sic) which RMI sent to CU.

APPENDIX F

IN THE SUPREME COURT

THE TURKS AND CAICOS ISLANDS ACTION NO. M 17/91

IN THE MATTER OF:

THE STATE OF TEXAS AND THE STATE BOARD OF INSURANCE - PLAINTIFFS

V:

RISK MANAGERS INTERNATIONAL, INC:
HERSCHELL HANCOCK INDIVIDUALLY AND AS AGENT OF RISK MANAGERS-INTERNATIONAL, INC. AND
NYLE LARGE INDIVIDUALLY AND AS AN AGENT OF RISK MANAGERS INTERNATIONAL, INC. AND
CORPORATE UNDERWRITERS, LTD. - DEFENDANTS

AND IN THE MATTER OF SECTION 201 OF THE COMPANIES ORDINANCE 1981

AND IN THE MATTER OF THE CONFIDENTIAL RELATIONSHIPS ORDINANCE 1979

ORDER

HAVING HEARD COUNSEL for Corporate Underwriters on a Summons for Directions and having read the Affidavit of Reshid Bodhanya filed in support thereof it is ordered and directed that no confidential information within the meaning of the Companies

Ordinance 1981 and the Confidential Relationships Ordinance 1979 be divulged by Corporate Underwriters particularly in answer to: -

(a) State of Texas First Document Production Request to Corporate Underwriters Ltd. served on 3rd July 1991.

(b) State of Texas First Set of Interrogatories to Corporate Underwriters Ltd. served on 3rd July 1991.

(c) Plaintiffs' First Set of Request for Admissions to Corporate Underwriters Ltd. served on 17th July 1991.

Dated this 6th day of February 1992.

/s/ Lindsay Worrell
LINDSAY WORRELL GCM Q.C.

HON CHIEF JUSTICE

Supreme Court, U.S.
FILED
FEB 3 1993
OFFICE OF THE CLERK

No. 92-10-50

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1992

IN RE: RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD.,

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS TO THE HONORABLE JOHN K. DIETZ, PRESIDING JUDGE OF THE 250TH JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS

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No. 92-10-50

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1992

IN RE: RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD.,

---

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS TO THE HONORABLE JOHN K. DIETZ, PRESIDING JUDGE OF THE 250TH JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS

STATEMENT OF THE CASE

Petitioners' statement of the case contains numerous inaccuracies and omits several important facts. Therefore, the State of Texas ("State") provides the following statement of the case.

Corporate Underwriters, Ltd. ("Corporate Underwriters") is an off-shore insurance company incorporated in the Turks and Caicos Islands in the British West Indies. Corporate Underwriters sells insurance to Texas residents which covers risks located and resident in Texas. Corporate Underwriters is not licensed to sell insurance in Texas. Corporate Underwriters claims that it is exempt from any licensing requirements in Texas because it is selling insurance in Texas on an "independently procured" basis. Texas law requires that

to comply with the independently procured exemption, all negotiations for the procurement of such insurance must occur outside of Texas, the transaction must be reported to the State, and a premium tax must be paid to the State. Tex. Ins. Code Ann. art. 1.14-1 §2(b)(4) (Vernon Supp. 1993) ("Insurance Code").

Risk Managers International, Inc. ("RMI") is a Texas corporation which administers claims for Corporate Underwriters. RMI has its offices in Dallas. RMI is not licensed to sell insurance and is not licensed as a third-party administrator. Herschel Hancock is the president of RMI. Hancock is not licensed to sell insurance in Texas and is not licensed as a third-party administrator.[1]

In the late 1980's, the State became aware that Petitioners were engaged in certain insurance activity in Texas. The State's investigation into Petitioners' activities revealed that the negotiations between Corporate Underwriters and its prospective insureds do not

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[1] Although Petitioners claim that Corporate Underwriters conducts its insurance business from offices in the Turks and Caicos, Corporate Underwriters receives mail and premium check's at RMI's office in Dallas. Corporate Underwriters maintains a bank account in Dallas and Hancock has signatory authority on such account. At Hancock's direction, funds from the account are used to pay commissions to insurance agents and consultants in Texas who bring business to Corporate Underwriters. [Appendix L-27]

take place entirely outside the State of Texas and that therefore, Corporate Underwriters is not selling insurance in Texas on an independently procured basis. In furtherance of its investigation, the State subpoenaed Hancock to appear for deposition and produce certain documents related to the activities of Corporate Underwriters and RMI in Texas. Hancock asserted the Fifth Amendment privilege against self-incrimination and refused to testify or produce the documents. The State moved to compel Hancock's response and the State district court entered an order compelling Hancock to respond to the subpoena. Hancock appealed the district court order, but failed to obtain relief. *Hancock v. State of Texas*, 800 S.W.2d 683 (Tex. App. - Austin 1990, writ denied).

During the pendency of Hancock's appeal, the State uncovered additional evidence that Petitioners were unlawfully selling insurance in Texas. Petitioners' activities were particularly troubling to State regulators because Petitioners were purporting to sell workers' compensation insurance to numerous employee leasing firms throughout Texas.[2] These employee leasing firms "employ"

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[2] Petitioners have attempted to create a distinction between "statutory" workers' compensation insurance and workers'

thousands of workers, usually in fields where there is a high risk of on-the-job injury. If Corporate Underwriters does not have adequate reserves to cover the claims that are bound to arise under such policies or if Corporate Underwriters is misappropriating premiums, the workers who are the beneficiaries of such policies will be without meaningful coverage. Under these circumstances, the State would have been remiss if it had not taken action against the Petitioners.

Thus, on September 8, 1989, the State filed its complaint against Petitioners seeking to enjoin them from doing the unauthorized business of insurance in Texas and seeking imposition of fines and penalties for conducting the business of insurance in Texas without a license in violation of Insurance Code art 1.14-1. The State also applied for the *ex parte* appointment of a temporary receiver. Pursuant to the State's request, a temporary receiver was appointed for Corporate Underwriters and RMI. Petitioners

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compensation insurance used in a generic sense. In Texas, if an employer elects to subscribe to the workers' compensation system, that employer must purchase workers' compensation insurance from an insurance company specifically licensed to sell workers' compensation insurance. Tex. Rev. Civ. Stat. Ann. art. 8308-3.23(a) (Vernon 1992). Corporate Underwriters maintains that it is selling generic workers' compensation insurance which is outside the workers' compensation system.

characterize the temporary receivership, which was in effect for seven days, as illegal and improper and accuse the State of numerous wrongdoings during the receivership. [Appendix L-19] Petitioners argue that these alleged wrongdoings should bar the State from obtaining the discovery it now requests. Petitioners have been entirely unsuccessful, however, in establishing any of their allegations. For instance, Petitioners have failed to establish that the State seized any of Hancock's personal files during the temporary receivership. [Appendix L-35, L-59]. Petitioners have also failed to establish that the State intimidated any RMI employees or conducted unlawful searches of RMI or its employees.[3] Finally, Petitioners have never established that the State made any false statements to third parties concerning Petitioners.[4]

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[3]Petitioners' witness on these points testified that the State asked RMI employees for the keys to RMI's file cabinets and used the keys to obtain access to the cabinets. Further, Petitioners' witness testified that the State asked permission to search employee handbags, but did not search the handbag of any employee who denied permission for the search. The witness offered no evidence that the State threatened her or any other RMI employee. [Appendix L-23, L-35].

[4]In their allegations, Petitioners are evidently referring to the article which appeared in the March 19, 1991 edition of *The Wall Street Journal*. The article explores the havoc wreaked by cut rate employee leasing companies and the off-shore, unregulated insurance companies that provide them with what is purported to be workers'

On September 25, 1989, the state district court, after hearing evidence and the argument of counsel, issued a temporary injunction order enjoining Petitioners from doing the business of insurance in Texas. The court specifically found that Petitioners had not complied with the independently procured exemption and were engaged in the unauthorized business of insurance in Texas. The court dissolved the temporary receivership on the basis that the State had not produced any evidence of insolvency. Petitioners filed an interlocutory appeal of the trial court's temporary injunction order. The Court of Appeals, Third Judicial District of Texas, Austin, Texas, in a written opinion, affirmed the trial court's ruling. [Appendix B-1] The Texas Supreme Court dismissed Petitioners' appeal for want of jurisdiction.

During the course of Petitioners' appeals of the temporary injunction order, the State's efforts to obtain discovery from Petitioners were stayed. When the appeals were resolved in favor of the State, the State served Petitioners with its discovery requests. In response, RMI produced limited responses, but moved for a

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compensation insurance. One of the State's attorneys was interviewed for the article, but there has never been any showing that the State made any false or inaccurate statements in connection with the interview or that the article contains any inaccuracies.

protective order with respect to a majority of the requests alleging that it has a privacy right which exempts it from having to respond. Corporate Underwriters repeated the privacy arguments asserted by RMI and further objected to every discovery request and moved for a protective order on the basis of the Turks and Caicos nondisclosure laws.[5]

On March 10, 1992, the trial court heard arguments and testimony on the motions for protective order filed by RMI and Corporate Underwriters. The trial court ordered RMI to respond to the discovery in dispute and in a ruling from the bench, ordered Corporate Underwriters to submit its responses to the court for an *in camera* inspection. [Appendix H-1 and Petitioners' Appendix C-1-1] On April 13, 1992, the trial court heard Petitioners' arguments for reconsideration and denied the motions for reconsideration. On June 8, 1992, the trial court heard Petitioners' second motion for reconsideration. Once again, the trial court denied Petitioners the relief they requested. Thereafter, Petitioners presented their Motion

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[5] Hancock made the same privacy objections and also asserted the Fifth Amendment in response to the State's discovery requests. In a later ruling, the trial court sustained some, but not all, of Hancock's Fifth Amendment objections.

for Leave to File Petition for Writ of Mandamus and for Immediate Temporary Relief to the Court of Appeals, Third Judicial District of Texas. The Court of Appeals denied Petitioners' motion on July 1, 1992. [Petitioner's Appendix A-1-1] Petitioners then presented their Motion for Leave to File Petition for Writ of Mandamus and for Immediate Temporary Relief to the Supreme Court of Texas. The Supreme Court of Texas denied this motion on September 16, 1992. [Petitioners' Appendix A-2-1]

REASONS FOR DENYING THE REQUEST FOR WRIT OF MANDAMUS

Petitioners make two arguments in support of their request that this Court issue a writ of mandamus compelling the trial court judge to vacate his discovery orders. First, Petitioners argue that they have a constitutional right to privacy which extends to the discovery sought by the State in this civil litigation. Petitioners claim that this privacy right exempts them from having to respond to the State's discovery requests. Second, Petitioners contend that Corporate Underwriters, which is subject to the jurisdiction of the Texas courts, is exempt from responding to the State's discovery requests because the laws of the Turks and Caicos allegedly prohibit disclosure of such information.

As demonstrated below, Petitioners' arguments must fail. First, the Fourth Amendment rights of a corporation are not violated when the requested discovery is relevant and reasonable. Here, the trial court ruled that the requested discovery was relevant and not overbroad, so there has been no infringement of Petitioners' Fourth Amendment rights. Finally, it is well-established that a court in this country is empowered to order discovery when it has personal jurisdiction over a foreign party, despite the existence of foreign nondisclosure laws. The trial court did not abuse its discretion when it ordered Corporate Underwriters to produce its discovery for an *in camera* inspection, so that it could weigh the respective interests of the parties and determine whether any of the discovery should be propounded to the State.

I.

THE TRIAL COURT ORDERS DO NOT INFRINGE ON PETITIONERS' CONSTITUTIONAL PRIVACY RIGHTS

Petitioners' assertions that the discovery ordered by the trial court would deprive them of their Fourth Amendment rights are incorrect and in direct opposition to prior rulings of this Court.

A. SINCE 1911 THIS COURT HAS HELD THAT CORPORATE DOCUMENTS AND FINANCIAL

INFORMATION ARE NOT AFFORDED ABSOLUTE PROTECTION UNDER THE FOURTH AMENDMENT

Petitioners fail to acknowledge this Court's decisions on the questions of whether financial information and corporate records may be compelled from a corporation and whether production of corporate documents is violative of a corporation's Fourth Amendment rights. This Court first addressed these issues in 1911 in *Wilson v. United States*, 221 U.S. 361 (1911). There, this Court reviewed a decision holding a corporate officer in contempt for refusing to produce the corporate books pursuant to grand jury subpoena. This Court found that the production of such documents did not violate the provisions of the Fourth Amendment. This Court stated:

> [B]ut the corporate form of business activity with its chartered privileges, raises a distinction when the authority of government demands the examination of books. That demand, expressed in lawful process, confining its requirements within the limits which reason imposes in the circumstances of the case, *the corporation has no privilege to refuse*....Although the object of the inquiry may be to detect the abuses it has committed, to discover its violations of law, and to inflict punishment by forfeiture of franchises or otherwise, *it must*

> *submit its books and papers to duly constituted authority when demand is suitably made.*

Wilson 221 U.S. 361, 382 (1911) (emphasis added).

This Court has consistently and continually followed *Wilson*, finding no infringement of Fourth Amendment rights when corporate records are properly subpoenaed or ordered to be produced. *See, American Lithographic v. Werckmeister*, 221 U.S. 603 (1911); *Wheeler v. United States*, 226 U.S. 478 (1913); *Grant v. United States*, 227 U.S. 74 (1913); *Essgee Co. of China v. United States*, 262 U.S. 151 (1923); *United States v. White*, 322 U.S. 694 (1944); and *United States v. Morton Salt Co.*, 338 U.S. 632 (1950).

In sum, the corporate records at issue are not absolutely protected by the Fourth Amendment from court ordered disclosure.

B. GOVERNMENTAL ENTITIES MAY OBTAIN CORPORATE RECORDS

Corporations are not permitted to engage in commerce free from regulatory scrutiny or in secret. *California Bankers Ass'n. v. Shultz*, 416 U.S. 21 (1974). In the present case, the trial and appellate courts have concluded that RMI and Corporate Underwriters have conducted the business of insurance in Texas. [Appendix B-1] As

entities who enjoy the benefits of selling insurance products in Texas, Corporate Underwriters and RMI must comply with the insurance regulations instituted by Texas.[6]

Subpoenas or orders sanctioned by a court seeking production of corporate records do not violate the Fourth Amendment if the requests comply with a four prong test: 1) the requests are not too indefinite or broad; 2) the demanding agency is authorized by law to make such an inquiry; 3) the inquiry seeks relevant materials; and 4) the disclosure is not unreasonable. *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 208 (1946). The State's discovery requests satisfy all four prongs of the test.

The discovery requested is relevant and material to the question of whether RMI and Corporate Underwriters have conducted the unauthorized business of insurance in Texas. The State has demonstrated that the discovery requests are reasonable because each of the requests relate to documents which will prove that RMI or Corporate Underwriters violated article 1.14-1 of the Insurance Code,

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[6] See McCarran Ferguson Act, 59 Stat. 33, 15 U.S.C. §1011 (Insurance regulation is governed by the State); *United States v. Morton Salt Co.*, 338 U.S. 632, 652-3 (1950).

or will provide information relating to the assessment of premium taxes and civil penalties under article 1.14-1.

In addition, records which an entity is required by law to maintain in its possession for inspection by or disclosure to a governmental entity are not subject to Fourth Amendment protection. *California Bankers Ass'n. v. Shultz*, 416 U.S. 21 (1974). This Court reasoned that artificial entities may be subject to enhanced regulations and regulatory requirements as a result of the privileges the entities derive from engaging in interstate commerce.

Further, this Court has ruled that an entity must comply with a request for information from a regulatory agency. In *United States v. Morton*, 338 U.S. 632, 652 (1950) this Court stated "that law enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law."

II.

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY ORDERING DISCOVERY OF PETITIONERS' CORPORATE DOCUMENTS AND FINANCIAL INFORMATION

Petitioners urge this Court to prohibit the discovery ordered by the trial court. As discussed the discovery is not violative of the U.S. Constitution. Moreover, the discovery requests are within the

scope of discovery as allowed by the Texas Rules of Civil Procedure. Therefore, this Court should not disturb the trial court's orders.

A. THE SCOPE OF DISCOVERY IS BROAD IN TEXAS

Texas Rule of Civil Procedure 166(b) (patterned after Fed. Rule Civ. Proc. 26(b)(1)) states that:

> Parties may obtain discovery regarding any matter which is relevant to the subject matter in the pending action whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.[7]

The discovery orders entered by the trial court compel RMI to answer interrogatories or produce the documents relating to the following areas of inquiry:

(a) money paid or owed relating to insurance solicited for risks resident, located or to be performed in Texas;
(b) receipt of money from the sale of insurance;
(c) payment of claims;
(d) payment of expenses, commissions, fees, taxes, relating to insurance sold covering a risk in Texas;

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[7] The relevant portions of Tex. Rule Civ. Proc. 166 (b) are included herein as Appendix A-1 .

(e) correspondence related to the marketing of insurance where the risk is located in Texas;
(f) disbursements or wire transfers between RMI and Corporate Underwriters regarding the solicitation or procurement of insurance;
(g) payment of salaries, expenses, or compensation to RMI or Corporate Underwriters;
(h) premium dollars paid to RMI and/or Corporate Underwriters;
(i) capital, reserve, or assets available for the payment of claims for insurance;
(j) consultant fees;
(k) money paid for solicitation of insurance; and
(l) compensation paid to Hancock, and or RMI.

[Petitioners' Appendix C-1-1, C-2-1 and Appendix K-1, M-1]

These areas of inquiry are necessary and material to the case at bar and are within the proper scope of discovery.

B. TEXAS COURTS ALLOW THE DISCOVERY OF FINANCIAL INFORMATION AND NET WORTH

Net worth is discoverable in this case because the State seeks civil penalties. The Texas Supreme Court has held that net worth, including financial statements, is discoverable in a suit in which punitive damages may be recovered. *Lunsford v. Morris*, 746 S.W.2d

471 (Tex. 1988)(orig. proc.); *Hanna v. Meurer*, 769 S.W.2d 680, 681 (Tex. App. - Austin, 1989), (orig. proc.) (*en banc, per curiam*). Net worth is discoverable because the purpose of punitive damages is to punish the defendant. As a result, the defendant's ability to pay damages is relevant so that damages may be properly assessed. *Lunsford* at 473. In order to punish the Petitioners for their illegal activities, the State seeks assessment of civil penalties in the statutory amount of up to ten thousand dollars per day per violation of the Insurance Code.[8] Civil penalties, like punitive damages, are awarded to punish and set an example for others. Thus, net worth is relevant to assessing civil penalties.

The Court of Appeals, Fifth Judicial District of Texas, has concluded that evidence of the amount of profit a defendant has obtained by violating a statute might be admissible evidence when assessing civil penalties. *Lloyd A. Fry Roofing Co. v. State*, 524 S.W.2d 313, 322 (Tex. App. - Dallas 1975, writ ref'd n.r.e.). Contrary to Petitioners' representations, *Fry Roofing* stands for the proposition that courts should assess civil penalties based on the

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[8] Specifically, the State seeks penalties pursuant to Tex. Ins. Code Ann. arts. 1.14-1, §3(d) and 21.21, §15(c) (Vernon 1993). [Petitioner's Appendix B-5-3, B-5-6]

nature and gravity of the violation. If evidence of the amount of profit a defendant made from illegal activities may be admitted into evidence in a case involving assessment of civil penalties, then evidence of net worth should be discoverable in the same suit.[9]

C. THE DISCOVERY SOUGHT BY THE STATE IS NECESSARY TO CALCULATE PREMIUM TAXES

All categories of information requested of Petitioners are needed to calculate unauthorized insurance premium taxes owed under Insurance Code article 1.14-1, §11. The State has sued for nonpayment of unauthorized insurance premium taxes under this article. The Insurance Code provides that an unauthorized insurance company must pay the State an unauthorized insurance premium tax of 4.85% of the amount of gross premiums *actually received* during a calendar year, not the amount of premiums which were *charged* as

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[9] Under Texas case law, obtaining discovery regarding financial information or net worth for a period of 10 years before trial is allowable. *Delgado v. Kitzman*, 793 S.W. 2d 332 (Tex. App. - Houston [1st Dist.] 1990), (orig. proc.) Relator RMI was incorporated in 1984, and discovery is requested from January 1, 1985.

the Petitioners have erroneously asserted.[10] In order to accurately calculate the premium taxes, the State must know: (1) the exact amount of premiums which the Petitioners actually received; (2) what premiums were paid for insurance risks located in Texas (as opposed to insurance risks located outside of the state); (3) what premium taxes, if any, have been reported to other states; and (4) when the insurance premiums were received by the Petitioner(s). [Appendix L-67] The date the premiums are *received* is critical to a determination of the amount of late payment penalties that should be assessed under the statute, due to varying rates of interest and various tax rates under the Insurance Code. Further, the State needs to know the amount of money paid by an insurer to any person acting as an agent, which is not included in the calculation of premium taxes and must be separated from the actual premium payment. Therefore, documentation demonstrating the amount of premium dollars which were used to pay agent's commissions is necessary.

Petitioners erroneously allege that they have previously produced documents which show the amount of premiums paid for

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[10] Under Tex. Ins. Code Ann. art. 1.14-1 § 11 (Vernon 1993) the term "premium" includes all premiums, membership fees, assessments, dues, and any other consideration for insurance.

each policy. Petitioners have produced certain insurance policies which demonstrate the *estimated policy premium* which might be charged under the policy. However, Petitioners have failed to produce any documents that indicate: (1) the amount of premiums which were *actually received* by Corporate Underwriters; (2) premiums paid for insurance risks located in *Texas*; (3) the amount, if any, of premium taxes which have been reported or paid to any other state(s); and (4) the date and calendar year in which the premiums were actually received. The State demonstrated through testimony of its chief witness that to accurately determine the amount of premium taxes owed, the State needs responses to the discovery it propounded to Petitioners.[11] [Appendix L-70]

D. THE DISCOVERY SOUGHT FROM INDIVIDUAL PETITIONER HERSCHEL HANCOCK IS WITHIN THE PROPER SCOPE OF DISCOVERY

Subsequent to the entry of the discovery orders which are the subject of Petitioners' request to this Court, the trial court heard Hancock's objections based on his alleged Fifth Amendment rights.

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[11] Petitioners also erroneously allege that the premium tax information is readily available from filings made with the Texas Comptroller's Office. Such filings do not exist and are not evident in the record.

Many of Hancock' Fifth Amendment objections were sustained. [Appendix K-1] As a result, Hancock has been ordered to provide the following information to the trial court for an *in camera* inspection: (1) Hancock's social security number; (2) Hancock's residential addresses; (3) the identity of Hancock's accountants; (4) Hancock's net worth; and (5) information regarding compensation received by Hancock from RMI and Corporate Underwriters. These areas of inquiry contain no privilege which would prevent their *in camera* inspection by the trial court. Thus, the trial court has not abused its discretion.

III.

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ORDERING CORPORATE UNDERWRITERS TO PRODUCE ITS DISCOVERY RESPONSES FOR *IN CAMERA* INSPECTION

Corporate Underwriters further objects to the discovery requests propounded by the State on the basis of the Turks and Caicos nondisclosure laws. Corporate Underwriters alleges that if it is compelled to produce the information sought by the State, it will be subject to criminal prosecution in the Turks and Caicos. First, it should be made clear that the trial court did not order Corporate

Underwriters to produce any discovery to the State. Instead, the trial court merely ordered Corporate Underwriters to produce its responses and responsive documents to the court for an *in camera* inspection. [Appendix M-1] To the extent that Corporate Underwriters' responses are duplicative of the responses by RMI, the trial court held that Corporate Underwriters is not obligated to produce such information. [Appendix H- 11] Corporate Underwriters has refused to tender its discovery responses for the *in camera* inspection.

A. THE TRIAL COURT HAS THE POWER TO ORDER PRODUCTION OF THE DISCOVERY SOUGHT BY THE STATE

The case law is unmistakably clear that when a United States Court has jurisdiction over a party which has control of documents or other information, that court has the power to order production of the discovery, despite the location of the documents and the existence of any foreign laws which may impose penalties for their disclosure. *Societe Internationale v. Rogers*, 357 U.S. 197, 204-206 (1958).; *See also, Societe Nationale v. U.S. District Court*, 482 U.S. 522, 544 n.29 (1987); *United States v. First Nat'l. Bank of Chicago*, 699 F.2d 341, 345 (7th Cir. 1983); *In re: Grand Jury Proceedings*, 532 F.2d 404, 407 (5th Cir. 1976); *United States v. First National City Bank*,

396 F.2d 897, 901 (2d Cir. 1968); and *In re: Uranium Antitrust Litigation (Westinghouse Electric Corp v. Rio Algom Ltd.)*, 480 F.Supp. 1138, 1145 (N.D. Ill. 1979).

It is undisputed that the trial court has jurisdiction over Corporate Underwriters. Further, Corporate Underwriters does not dispute that it has control of documents responsive to the State's discovery requests. Thus, the trial court has the power to compel Corporate Underwriters to respond to the State's discovery requests.

B. IT IS WITHIN THE DISCRETION OF THE TRIAL COURT TO ORDER THE DISCOVERY REQUESTED BY THE STATE.

While the existence of a foreign nondisclosure law does not prevent a United States court from ordering discovery, the trial court is instructed to use its discretion in determining whether to exercise such power. The Restatement (Third) on Foreign Relations Law (American Law Institute 1991 at § 442), identifies five factors to be weighed by a court in determining whether to exercise its power to compel production in the face of a foreign statute that blocks discovery. Those five factors are: (1) the importance of the documents to the litigation; (2) the degree of specificity of the requests; (3) whether the information originated in the United States;

(4) the availability of alternative means of securing the information; and (5) the extent to which non-compliance with the discovery requests would undermine important interests of the state or compliance with the request would undermine an important interest in the country where the information is located. In its brief to the trial court, the State addressed each of these elements in detail. In its ruling, the trial court concluded that it would review the discovery responses *in camera*, weigh the respective interests of each party and thereafter determine what documents or responses, if any, should be disclosed to the State. [Appendix H-12] Clearly, there has been no abuse of discretion since the trial court has not yet ruled that any of Corporate Underwriters' responses are discoverable. In any event, the State has made an adequate showing that the discovery should be ordered.

1. The Discovery Sought Is Important To The Litigation.

In its requests to Corporate Underwriters, the State seeks discovery of information regarding the solicitation, sale and delivery of insurance policies issued to Texas residents by Corporate Underwriters, premiums paid to Corporate Underwriters by Texas residents, claims made by Texas residents under the policies issued

by Corporate Underwriters, evidence of Corporate Underwriters' net worth or financial condition, and the manner in which Corporate Underwriters provides for the payment of claims as they arise. This discovery, as demonstrated in the preceding sections of this brief, is relevant and important to this litigation.

2. The State's Discovery Requests Are Sufficiently Specific. To the extent Petitioners have objected to the State's discovery requests for lack of specificity, such objections have been disposed of by the trial court in a prior ruling. Petitioners do not seek relief with respect to this prior ruling.

3. Much Of The Information Originated In The United States. The information requested by the State relates to Corporate Underwriters' insurance activities in Texas. The information requested by the State either originated in Texas or is directly related to Corporate Underwriters' business in Texas.

4. There Are No Alternative Means To Secure The Information. The trial court has ruled that Corporate Underwriters is not obligated to produce information for the *in camera* inspection that would be duplicative of the information supplied by RMI. [Appendix H-1] There are no other sources for the information.

5. Noncompliance With The Discovery Requests Would Undermine Important Interests Of Texas. The State has a strong interest in regulating insurance. Under the McCarran-Ferguson Act, Congress has conferred upon the states the ability to regulate insurance, declaring such regulation to be in the public interest. Section 1 of the Act, 59 Stat. 33, 15 U.S.C. §1011; *W & S Life Ins. Co. v. State Board of Equalization*, 451 U.S. 648 (1981); *Osborn v. Ozlin*, 310 U.S. 53 (1940) (holding that a state has a legitimate interest in all insurance policies protecting its residents, an interest which the state can protect even though the state action may have repercussion beyond state lines). This exercise of the State's regulatory powers can only be effectuated by allowing the State to conduct discovery to obtain evidence necessary for a complete and thorough investigation of unauthorized insurance activities. Corporate Underwriters, on the other hand, has not provided any justification of the Turks and Caicos nondisclosure laws or made any attempt to demonstrate how the interests of the Turks and Caicos could possibly outweigh the interest of the State.[12]

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[12] Corporate Underwriters states that the Turks and Caicos government extensively regulates all insurance companies incorporated in the Turks and Caicos. The State does not concur with

C. CORPORATE UNDERWRITERS HAS THE BURDEN OF PROOF IN ASSERTING THE EXEMPTION FROM DISCOVERY AND HAS FAILED TO MEET THIS BURDEN.

Under Texas law, Corporate Underwriters, as the party seeking to limit discovery by asserting a privilege or exemption from discovery, has the burden of proof. *Weisel Enterprises, Inc. v. Curry*, 718 S.W.2d 56, 58 (Tex. 1986) (orig. proc.) (*per curiam*) (*citing Jordan v. Court of Appeals for Fourth Supreme Judicial District*, 701 S.W.2d 644, 648-649 (Tex. 1985) (orig. proc.). The fact that Corporate Underwriters is asserting an exemption from discovery based on the Turks and Caicos nondisclosure laws does not alter this rule.

Petitioners contend that *McKesson Corp. v. Islamic Republic of Iran*, 138 F.R.D. 1 (D.D.C. 1991) suggests that the burden of

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this statement and would point out that all such regulation is done on a "confidential" basis which prohibits third parties from access to any of the information obtained by the Turks and Caicos authorities. Further, the Turks and Caicos authorities have refused to issue Corporate Underwriters a license to sell insurance in the Turks and Caicos. The "authority" granted to Corporate Underwriters by the Turks and Caicos government prohibits Corporate Underwriters from offering its insurance product to Turks and Caicos residents. In any event, the extent to which Corporate Underwriters is regulated in the Turks and Caicos is not relevant. Since Corporate Underwriters is conducting its insurance business in Texas, it is subject to regulation by the Texas authorities.

proof shifts to the State because a foreign blocking statute is at issue. *McKesson* does not stand for any such proposition. The holding in *McKesson* is limited to a very specific fact situation which is not applicable here. *McKesson* involved a suit against the country of Iran and application of the Foreign Sovereign Immunity Act ("FSIA"). In that case, the court found that before subject matter jurisdiction would lie under FSIA, the court had to find that a principal-agency relationship existed between Iran and the instrumentality that allegedly committed the wrong. Under FSIA, there is a presumption that an instrumentality is separate from the foreign sovereign. Thus, the plaintiff seeking discovery was allowed to take limited discovery with respect to the FSIA jurisdiction issue, but was directed to "avoid frustrating the significance and benefit of [Iran's] immunity to suit." *McKesson* at p. 3. None of the facts in *McKesson* are present here.

Corporate Underwriters has failed to meet its burden of proof in establishing an exemption from discovery.

D. THERE IS NO PUBLIC POLICY REASON TO EXEMPT CORPORATE UNDERWRITERS FROM DISCOVERY.

Corporate Underwriters complains that it faces a Hobson's Choice: violate the Turks and Caicos nondisclosure laws and be

subject to possible criminal penalties in the Turks and Caicos or violate Texas discovery rules and be subject to sanction in the pending litigation. Corporate Underwriter's dilemma is self imposed. Corporate Underwriters purposely availed itself of the Texas market for insurance and chose to do business in Texas. Corporate Underwriters must now abide by the rules of the Texas courts. If doing business in the State of Texas and abiding by the laws of the State of Texas subjects Corporate Underwriters to criminal penalties in the Turks and Caicos, perhaps Corporate Underwriters should consider limiting its business to the Turks and Caicos or incorporating in a different jurisdiction.

There is no evidence that the trial court abused its discretion in ordering the *in camera* inspection of Corporate Underwriters' responses to the State's discovery requests. Accordingly, Petitioners' Petition should be denied.

CONCLUSION

For the foregoing reasons, the State respectfully requests that Petitioners' Petition for Writ of Mandamus be denied and that this Court grant the State such other relief as provided at law or in equity.

Dated: February 3, 1993
Austin, Texas

Respectfully submitted,

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Supreme Court, U.S.
FILED
FEB 3 1993
OFFICE OF THE CLERK

No. 92-10-50

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1992

IN RE: RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD.,

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS TO THE HONORABLE JOHN K. DIETZ, PRESIDING JUDGE OF THE 250TH JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS

APPENDIX A-G

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RULE 166b. FORMS AND SCOPE OF DISCOVERY; PROTECTIVE ORDERS; SUPPLEMENTATION OF RESPONSES

2. Scope of Discovery. Except as provided in paragraph 3 of this rule, unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

a. In General. Parties may obtain discovery regarding any matter which is relevant to the subject matter in the pending action whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. It is also not ground for objection that an interrogatory propounded pursuant to Rule 168 involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time. It is also not ground for objection that a request for admission propounded pursuant to Rule 169 relates to statements or opinions of fact or of the application of law to fact or mixed questions of law and fact or that the documents referred to in a request may not be admissible at trial.

b. Documents and Tangible Things. A party may obtain discovery of the existence, description, nature, custody, condition, location and contents of any and all documents, (including papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, and any other data compilations from which information can be obtained and translated, if necessary, by the person from whom production is sought, into reasonably usable form) and any other

tangible things which constitute or contain matters relevant to the subject matter in the action. A person is not required to produce a document or tangible thing unless it is within the person's possession, custody or control. Possession, custody or control includes constructive possession such that the person need not have actual physical possession. As long as the person has a superior right to compel the production from a third party (including an agency, authority or representative), the person has possession, custody or control.

3. **Exemptions.** The following matters are protected from disclosure by privilege:

a. Work Product. The work product of an attorney, subject to the exceptions of Texas Rule of Civil Evidence 503(d) which shall govern as to work product as well as to attorney-client privilege.

b. Experts. The identity, mental impressions and opinions of an expert who has been informally consulted or of an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial or any documents or tangible things containing such information if the expert will not be called as an expert witness, except that the identity, mental impressions and opinions of an expert who will not be called to testify as an expert and any documents or tangible things containing such impressions and opinions are discoverable if the consulting expert's opinion or impressions have been reviewed by a testifying expert.

c. Witness Statements. The written statements of potential witnesses and parties, when made subsequent to the occurrence or transaction upon which the suit is based and in connection with the prosecution, investigation, or defense of the particular suit, or in

anticipation of the prosecution or defense of the claims made a part of the pending litigation, except that persons, whether parties or not, shall be entitled to obtain, upon request, copies of statements they have previously made concerning the action or its subject matter and which are in the possession, custody, or control of any party. The term "written statements" includes (i) a written statement signed or otherwise adopted or approved by the person making it, and (ii) a stenographic, mechanical, electrical or other type of recording, or any transcription thereof which is a substantially verbatim recital of a statement made by the person and contemporaneously recorded. For purpose of this paragraph a photograph is not a statement.

d. Party Communications. Communications between agents or representatives or the employees of a party to the action or communications between a party and that party's agents, representatives or employees, when made subsequent to the occurrence or transaction upon which the suit is based and in connection with the prosecution, investigation or defense of the particular suit, or in anticipation of the prosecution or defense of the claims made a part of the pending litigation. This exemption does not include communications prepared by or for experts that are otherwise discoverable. For the purpose of this paragraph, a photograph is not a communication.

e. Other Privileged Information. Any matter protected from disclosure by any other privilege.

Upon a showing that the party seeking discovery has substantial need of the materials and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means, a party may obtain discovery of the materials otherwise exempted from discovery by subparagraphs c and d of this paragraphs 3. Nothing in this paragraph 3 shall be construed to render non-discoverable the

identity and location of any potential party, any person having knowledge of relevant facts, any expert who is expected to be called as a witness in the action, or of any consulting expert whose opinions or impressions have been reviewed by a testifying expert.

4. Presentation of Objections. Either an objection or a motion for protective order made by a party to discovery shall preserve that objection without further support or action by the party unless the objection or motion is set for hearing and determined by the court. Any party may at any reasonable time request a hearing on any objection or motion for protective order. The failure of a party to obtain a ruling prior to trial on any objection to discovery or motion for protective order does not waive such objection or motion. In objecting to an appropriate discovery request within the scope of paragraph 2, a party seeking to exclude any matter from discovery on the basis of an exemption or immunity from discovery, must specifically plead the particular exemption or immunity from discovery relied upon and at or prior to any hearing shall produce any evidence necessary to support such claim either in the form of affidavits served at least seven days before the hearing or by testimony. If the trial court determines that an in camera inspection and review by the court of some or all of the requested discovery is necessary, the objecting party must segregate and produce the discovery to the court in a sealed wrapper or by answers made in camera to deposition questions, to be transcribed and sealed in event the objection is sustained. When a party seeks to exclude documents from discovery and the basis for objection is undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights, rather than a specific immunity or exemption, it is not necessary for the court to conduct an inspection and review of the particular discovery before ruling on the objection. After the date on which answers are to be served, objections are waived unless an extension of time has been obtained by agreement or order of the court or good cause is shown for the failure to object within such period.

B-1

IN THE COURT OF APPEALS,
THIRD DISTRICT OF TEXAS,

AT AUSTIN

No. 3-89-212-CV

RISK MANAGERS INTERNATIONAL, INC., ET AL.,
Appellants.

vs.

STATE OF TEXAS,
Appellee

FROM THE DISTRICT COURT OF TRAVIS COUNTY,

299TH JUDICIAL DISTRICT

NO. 471,568,

HONORABLE PETE LOWRY, JUDGE PRESIDING

The State of Texas, through the Attorney General, brought suit to prohibit Corporate Underwriters, Ltd., and Risk Managers International, Inc. (Risk Managers) from practicing the business of insurance in this State without authorization. This is an interlocutory appeal from an order of the district

court issuing a temporary injunction and dissolving a previously ordered temporary receivership. Risk Managers appeals from that portion of the order issuing the temporary injunction; the State appeals from that portion dissolving the temporary receivership. We will affirm the order of the district court.

As a result of several complaints and inquiries, the State Board of Insurance began investigating Risk Managers to determine if it was engaging in the unauthorized business of insurance in Texas. The State Board requested Herschel Hancock, the president and director of Risk Managers, to provide certain information. After several months delay, Hancock responded that he would not provide the requested information. The State then issued a subpoena to Hancock. However, Hancock refused to answer any questions and refused to produced any corporate documents, asserting his fifth amendment privilege against self-incrimination. The State then instituted an action against Hancock and obtained an order compelling him to comply with the subpoena. Hancock appealed that order to this Court, where it is currently pending.

After that appeal was taken, the State instituted the present action against Risk Managers for insurance fraud, deceptive trade practices, and conducting the business of insurance without authority. The State was also granted leave to file a petition in the nature of quo warranto. The State sought and received from the trial court, ex parte, a temporary restraining order and the appointment of a temporary receiver. Risk Managers moved to dissolve both the temporary restraining order and the receivership. That motion was heard along with the State's application for temporary injunction. The State introduced into evidence documents that were obtained as a result of the receiver's presence in Risk Managers' offices. Risk Managers asserts that these were the very type of documents on which Hancock's fifth amendment claim was based. Based on this and other evidence, the trial court found that Risk Managers had engaged in the unauthorized business of insurance and issued a temporary injunction. However, the trial court dissolved the temporary receivership.

State's Cross-Points

In three cross-points, the State contends that the trial court erred in dissolving the temporary receivership. The appointment or discharge of a temporary receiver is committed to the sound discretion of the trial court and will not be disturbed on appeal in the absence of a clear abuse of discretion. *Washington Am. Life Ins. Co. v. State*, 545 S.W.2d 291, 294 (Tex. Civ. App. 1977, no writ); *Manning v. State*, 423 S.W.2d 406, 410 (Tex. Civ. App. 1967, writ ref'd n.r.e.).

This Court has held that when a corporation has been restrained in the public interest from conducting the unauthorized business of insurance, receivership proceedings are permissible. *Washington Am. Life*, 545 S.W.2d at 294; *Manning*, 423 S.W.2d at 410. In addition, the Texas Insurance Code provides:

> If the Commissioner of Insurance is satisfied at any time ... that such insurance company is not in condition to continue business in the interest of its policy or certificate holders, the Commissioner of Insurance shall give notice to the Attorney General who shall thereupon apply to any Court in Travis County, Texas, having jurisdiction thereof for leave to file suit in the nature of quo warranto to forfeit the charter of

> such insurance company or to require it to comply with the law or to satisfy the Commissioner of Insurance as to its solvency, and to satisfy the requirement that its condition is such as to render the continuance of its business not hazardous to the public or to the holders of its policies or certificates of insurance. It shall be in the discretion of the Commissioner of Insurance to determine at any time whether ... he will report it to the Attorney General for the purpose of taking any remedial action including, without limitation, applying for appointment of a receiver under Article 21.28 of this Code. No period of supervision or conservatorship is necessary as a prerequisite for the Attorney General to take that remedial action.

Tex. Ins. Code Ann. art. 21.28, § 5 (Supp. 1990).

The State initially argues that, under the Insurance Code, the appointment of a receiver is mandatory if the trial court finds that the insurer has engaged in the unauthorized business of insurance. However, the Insurance Code only authorizes the Commissioner of Insurance to request the Attorney General to seek appointment of a receiver. It does not limit a trial court's discretion in the appointment of a receiver based on the court's determination of the public interest involved.

The State also argues that the trial court abused its discretion in dissolving the receivership under this Court's

holding in *State v. Memorial Benevolent Society*, 384 S.W.2d 776 (Tex. Civ. App. 1964, writ ref'd n.r.e.). In that factually analogous case, the trial court vacated the appointment of a receiver and dissolved an injunction on the basis of an express finding that the defendant had never engaged in the business of insurance. This Court determined that the undisputed facts established that the defendant was engaging in the business of insurance, and on that basis reinstated the injunction and the receiver. The State argues that *Benevolent Society* stands for the proposition that once a court determines that an insurer is engaging in the unauthorized business of insurance, the court has no discretion to refuse to appoint a receiver. That proposition is contrary to this Court's holdings in *Manning* and *Washington Am. Life*, and we decline to follow it. Moreover, the present case is distinguishable from *Benevolent Society* in that the trial court here did not expressly condition the dissolution of the receivership on any particular facts or findings. Indeed, the trail court expressly found that Risk Managers was engaged in the unauthorized business of insurance. Therefore, the trial court did not base its dissolution

of the receivership solely on an erroneous legal conclusion, as was the case in *Benevolent Society*.

The record in the present case contains evidence that Risk Managers is not insolvent and that the temporary injunction would be sufficient to protect the public interest. Therefore, the trial court was authorized to conclude that a receivership was not necessary to protect the public and policyholders. Accordingly, we hold that the trial court did not abuse its discretion in dissolving the receivership. The State's cross-points are overruled.

Risk Managers' Points of Error

Risk Managers brings five points of error contending that the trial court erred in issuing the temporary injunction. Risk Mangers' primary argument is that State's exhibits 29-31 and 33-39 were erroneously admitted, and that without them the trial court had no evidence or basis on which to issue the temporary injunction.

The standard of review on appeal from the granting of a temporary injunction is whether the trial court abused its discretion in granting the temporary relief. *Davis v. Huey*, 571

S.W.2d 859, 862 (Tex. 1978); *State v. Southwestern Bell Tel. Co.*, 526 S.W.2d 526, 528 (Tex. 1975). Risk Mangers contends that the trial court abused its discretion because there is no evidence to support the trial court's finding that Risk Managers engaged in the unauthorized business of insurance, on which the injunction was based.

Exhibits 29-31 and 33-39, which Risk Managers contends are the same type of documents to which it had asserted a fifth amendment privilege in earlier proceedings, were admitted as documents obtained by the receiver during the course of a delinquency proceeding. Tex. Ins. Code Ann. art. 21.28, § 11(a) (Supp. 1990). Risk Managers argues that these documents were obtained only through the "unlawful appointment" of the receiver, thereby allowing the State to obtain via the back door what it could not get (at least not immediately) through the front door.

As far as we can tell from its brief, Risk Managers does not assert that the State misrepresented facts to the trial court in order to obtain the ex parte appointment of the receiver. Nor does Risk Managers contend that the trial court lacked

jurisdiction to order the appointment of a temporary receiver. *Cf. Spence v. State Nat. Bank*, 5 S.W.2d 754 (Tex. Comm. App. 1928, jdgmt adopted) (if a court has jurisdiction, an error or irregularity in the proceedings will not render an order appointing a receiver void, but at most would render it voidable). Rather, the only argument offered by Risk Managers to support its contention that the documents were obtained "illegally" is that the trial court, in ordering the receivership dissolved, impliedly declared it to be void *ab initio*. Therefore, following Risk Managers' argument, the acts of the receiver are void, and the documents could not properly be admitted as documents obtained by the receiver in a delinquency proceeding.

The trial court had jurisdiction to appoint a receiver because Risk Managers was alleged to be engaged in the unauthorized business of insurance. *See Washington Am. Life*, 545 S.W.2d 291; *Manning*, 423 S.W.2d 406; Tex. Ins. Code Ann. art. 21.28A, § 5 (Supp. 1990). Therefore, the trial court's order was not void but was, at most, merely voidable. Accordingly, we must examine the record to see if the trial

court subsequently voided the order appointing the receiver. If it did not, this Court is not free to adjudicate this issue. *See Payne v. Snyder*, 661 S.W.2d 134, 140 (Tex. App. 1983, writ ref'd n.r.e).

After the ex parte order appointing the receiver was signed, Risk Managers appeared in the case and moved to dissolve the order. In its motion, Risk Managers argued that the appointment was improper because the State, in its motion, failed to substantiate that Risk Managers was engaged in the business of insurance, and because the ex parte appointment deprived Risk Managers of due process. Risk Managers prayed for judgment "in conformity with these pleadings and for such further and other relief to which defendant may be entitled." Following a hearing, the trial court ruled from the bench that he would dissolve the receivership order. This was followed with a written order stating simply that "IT IS ORDERED that the temporary receivership ordered in the temporary restraining order is hereby discharged and the temporary receiver, Stephen Durish is hereby dissolved. The temporary receiver has no more responsibility as receiver in this cause."

The order dissolving the receivership contains no language indicating that it was intended to affect anything other than the *future* viability of the receivership. Moreover, by admitting into evidence the documents obtained by the receiver during the course of the short-lived receivership, and by expressly finding that Risk Managers engaged in the unauthorized business of insurance, the trial court impliedly found the receivership not to be void. We are, therefore, unable to conclude that the trial court intended to declare the receivership order void *ab initio*. Accordingly, we hold that the trial court did not err in admitting into evidence the documents obtained by the receiver and did not abuse its discretion in issuing the temporary injunction.

Moreover, even assuming arguendo that exhibits 29-31 and 33-39 were improperly admitted, the temporary injunction is supported by other evidence. The Texas Insurance Code defines engaging in the business of unauthorized insurance as doing the business of insurance in the State of Texas without legal authority. Tex. Ins. Code Ann. art 1.14-1, § 3 (Supp. 1990). Doing the business of insurance is defined as:

[A]ny of the following acts in this state effected by mail or otherwise is defined to be doing an insurance business in this state...

1. The making of or proposing to make, as an insurer, an insurance contract.

2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.

3. The taking or receiving of any application for insurance.

4. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof.

5. The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.

6. Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of

> information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subdivision shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer.

Tex. Ins. Code Ann. art. 1.14, § 2(a) (Supp. 1990).

Exhibits 1 and 2 contain insurance policies for workers' compensation and general liability insurance. Several of these policies and endorsement name the insurer as "Corporate Underwriters Limited by Risk Managers International," state that the issuing office is in Dallas, Texas, and are signed by Nyle Large, a representative of Risk Managers. Exhibit 2

contains statements made by a Texas insured that it had purchased workers' compensation insurance from Corporate Underwriters, Ltd. through Risk Managers International, Inc., and that Risk Managers was paying all their claims. Exhibit 3 contains statements from a prospective insured that he received price quotations from Risk Managers and a visit in Texas from Nyle Large, who was soliciting insurance business. It is undisputed that Risk Managers does not have a license or charter that would allow it to conduct the business of insurance in Texas. The above constitutes sufficient evidence to support the trial court's conclusion that Risk Managers had engaged in the unauthorized business of insurance in Texas.

Risk Managers also asserts that it falls within an exemption contained in the Texas Insurance Code: "The provisions of this section do not apply to: ... [t]ransactions involving contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid in accordance with this Article." Tex. Ins. Code ann. art. 1.14-1, § 2(b)(4) (1981).

Generally, a person or entity claiming the benefit of a statutory exemption has the burden of proving every fact essential to the invocation of the exemption. *See, United States v. First City Nat'l Bank,* 386 U.S. 361, 366 (1967); *Cramer v. Sheppard*, 167 S.W.2d 147, 155 (Tex. 1942). Here, Risk Managers has failed to demonstrate that the transactions of insurance about which the State complains were independently procured. Indeed, the evidence affirmatively demonstrates that at least some of Risk Managers' insurance contracts were *not* independently procured. The record contains evidence that Risk Managers sent price quotations, lists of insureds, and forms for inquiry to prospective Texas insureds before they purchased insurance. Thus, at least some of the negotiations leading up to the procurement of insurance contracts occurred in Texas. In addition, the evidence indicates that Risk Managers failed to report and pay premium taxes on the allegedly independently procured policies. Therefore, Risk Managers failed to demonstrate the applicability of the exemption. Risk Managers' points of error are overruled.

The order of the district court is affirmed.

/S/
J. Woodfin Jones, Justice

[Before Justices Powers, Gammage and Jones]

Affirmed

Filed: August 8, 1990

[Do Not Published]

COURT OF APPEALS
Third District
Austin, Texas

I, Susan K. Bage, Clerk of the Court of Appeals for the Third District of the State of Texas, hereby certify that the foregoing nine (9) pages contain a true and correct xeroxed copy of the:

OPINION

filed in said court on the 8th day of August, 1990, in the following numbered and entitled cause:

RISK MANAGERS INTERNATIONAL, INC., ET AL.

No. 3-89-212-CV vs.

STATE OF TEXAS

on appeal to said court from Travis County, Texas.

WITNESS MY HAND and the seal of said Court, this the 24th day of June, 1991.

Susan K. Bage
Clerk

By /S/
Diane Blackley, Deputy

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE, Plaintiffs,	§	IN THE DISTRICT COURT
VS.	§	
RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD., Defendants.	§	OF TRAVIS COUNTY, TEXAS
	§	299TH JUDICIAL DISTRICT

STATE OF TEXAS' SECOND DOCUMENT PRODUCTION REQUEST TO CORPORATE UNDERWRITERS, LTD.

TO: Corporate Underwriters, Ltd., by and through their attorney of record, Hector DeLeon, DELEON, BOGGINS & RICHARDS, 480 Austin Centre, 701 Brazos, Austin, Texas 78701.

Please take notice that request is hereby made pursuant to Rule 167 of the Texas Rules of Civil Procedure that

Defendant, Corporate Underwriters, Ltd., produce and permit the undersigned attorney for Plaintiff to inspect and copy or reproduce the documents hereinafter designated in the offices of the Attorney General, 411 West 13th St., 7th floor, Austin, Texas, 78701, on _____ 1992, at ____ a.m. Within thirty (30) days after service of this Request for Production of Documents, Defendant, Corporate Underwriters, Ltd., shall file a written response stating with respect to each request that an inspection and copying or reproduction will be permitted as requested unless the request is objected to, in which event the reason for the objections shall be stated.

DEFINITIONS AND INSTRUCTIONS

A. As used herein, the terms "you" and "your" shall mean Corporate Underwriters, Ltd., its attorneys, officers, agents, employees, and representatives.

B. As used herein, the terms "Corporate Underwriters, Ltd." and "CU" shall mean Corporate

Underwriters, Ltd., its attorneys, officers, agents, employees, and representatives.

C. As used herein, the terms "Risk Managers International, Inc." and "RMI" shall mean Risk Managers International, Inc., its attorneys, officers, agents, employees, and representatives.

D. The term "document" or "documentary material" shall mean all writings of every kind, source, and authorship, both originals and all nonidentical copies thereof, in your possession, custody, or control, or known by you to exist, irrespective of whether the writing is one intended for or transmitted internally by you, or intended for or transmitted to any other person or entity, including without limitation any government agency, department, administrative, or private entity or person. The term shall include handwritten, typewritten, printed, photocopied, photographic, or recorded matter. It shall include communications in words, symbols, pictures, sound recordings, films, tapes, and information stored

in, or accessible through, computer or other information storage or retrieval systems, together with the codes and/or programming instructions and other materials necessary to understand and use such systems. For purposes of illustration and not limitation, the term shall include: affidavits; agendas; agreements; analyses; announcements; bills, statements, and other records of obligations and expenditures; books; brochures; bulletins; calendars; canceled checks, vouchers, receipts and other records of payments; charts, drawings; check registers; checkbooks; circulars; collateral files and contents; contracts; corporate by-laws; corporate charters; correspondence; credit files and contents; deeds of trust; deposit slips; diaries, drafts; files; guaranty agreements; instructions; invoices; ledgers, journals balance sheets, profit and loss statements, and other sources of financial data; letters, logs, notes, or memoranda of telephonic or face-to-face conversations; manuals; memoranda of all kinds, to and from any persons, agencies, or entities; minutes; minute books; notes; notices; parts lists; papers; press

releases; printed matter (including published books, articles, speeches, and newspaper clippings); purchase orders; records; records of administrative technical, and financial actions taken or recommended; reports; safety deposit boxes and contents and records of entry; schedules; security agreements; specifications; statement of bank accounts; statements, interviews; stock transfer ledger; technical and engineering reports, evaluations, advice, recommendations, commentaries, conclusions, studies, test plans, manuals, procedures, data, reports, results, and conclusions; summaries, notes, and other records and recordings of any conferences, meetings, visits, statements, interviews or telephone conversations; telegrams; teletypes and other communications sent or received; transcripts of testimony; UCC instruments; work papers; and all other writings, the contents of which relate to, discuss, consider, or otherwise refer to the subject matter of the particular discovery requested.

E. The term "documents" and "documentary material" shall also include, but shall not be limited to: 1) a

contract of insurance; 2) an application for insurance; 3) any records relating to premiums, commissions, membership fees, assessments, dues, or other consideration for any insurance; 4) any records relating to the solicitation or negotiation of insurance or renewals; 5) any records relating to the dissemination of information as to coverage or rates; 6) any records relating to the inspection of risks; 7) any records relating to the investigation or adjustment of claims or losses; and 8) any records relating to the transaction of matters subsequent to the effectuation of a contract of insurance.

F. "Person": The term "person" shall include individuals, associations, partnerships, corporations, and any other type of entity or institution whether formed for business purposes or any other purposes.

G. "Identify" or "Identification":

1. When used in reference to a person, "identify" or "identification" means to state his/her full name, present or last known address and telephone number.

2. When used in reference to a public or private corporation, governmental entity, partnership or association, "identify" or "identification" means to state its full name and present or last known business address or operating address.

3. When used in reference to a document, "identify" or "identification" shall include statement of the following:

(a) the title, heading, or caption, if any, of such document;

(b) the identifying number(s), letter(s), or combination thereof, if any; and the significance or meaning of such number(s), letter(s), or combination thereof, it necessary to an understanding of the document and evaluation of any claim of protection from discovery.

(c) the date appearing on such document; if no date appears thereon, the answer shall so state and shall give the date or approximate date on which such document was prepared.

(d) the number of pages and the general nature or description of such document (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.), with

sufficient particularity so as to enable such document to be precisely identified;

(e) the name and capacity of the person who signed such document; if it was not signed the answer shall so state and shall give the name of the person or persons who prepared for it;

(f) the name and capacity of the person to whom such document was addressed and the name and capacity of such person, other than such addressee, to whom such document, or a copy thereof, was sent; and

(g) the physical location of the document and the name of its custodian or custodians.

H. "Insurance": the term "insurance" or "insurance coverage" is defined as a contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils. The party agreeing to make the compensation is called the "insurer." A contract whereby one undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event and is applicable only to some contingency or

act to occur in future. An agreement by which one party for a consideration promises to pay money or its equivalent or to do an act valuable to other party upon destruction, loss, or injury of something in which other party has an interest. An insurance contract can be called a "policy."

I. "Premium": the term "premium" is defined as the sum paid or agreed to be paid by an insured to the insurer as the consideration for the insurance. The price for insurance protection for a specified period of exposure.

J. "Insured": the term "insured" is defined as the person whose risks are indemnified or covered by the insurer. Further "insured" is defined as the person who obtains or is otherwise covered by insurance on his health, life, or property. The "insured" in a policy is not limited to the insured named in the policy, but applies to anyone who is insured under the policy.

K. "Solicitation": the term "solicitation" is defined as: 1) proposing to make, as an insurer, an insurance contract;

2) proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety; 3) disseminating information as to insurance coverage or insurance rates; 4) receiving any information as to insurance coverage or insurance rates; 5) forwarding applications for insurance; 6) forwarding requests for insurance; 7) delivering policies or contracts; and 8) in any manner representing or assisting a person or insurer in the transaction of insurance.

L. "Risk": the term "risk" is defined as the casualty or subject matter contemplated in a contract of insurance.

TIME PERIOD

The time period for all documents requested herein is to be from January 1, 1985, to the present, unless a specific request designates a different time period.

DOCUMENTS AND MATERIALS TO BE PRODUCED

1. All documents relating to money paid or owed to any person or entity who solicited or aided in soliciting insurance coverage for you with respect to risks resident,

located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

2. All documents relating to the receipt of money by you for insurance coverage sold to any person or entity located in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

3. All documents relating to claims made against insurance coverage sold to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer.

4. All documents relating to claims paid for insurance coverage sold to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer.

5. All documents relating to expenses, commissions, fees, taxes and other costs related to insurance coverage sold to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer.

6. All correspondence from any person or entity relating to insurance coverage marketed to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer. This request includes, but is not limited to, correspondence to or from insureds; correspondence to or from insurance agents; correspondence to or from prospective purchasers; and correspondence to or from any agent, employee, or officer of Risk Managers International, Inc., or Corporate Underwriters, Ltd.

7. All documents which are certificates of incorporation, by-laws, and minutes of board of directors meetings of Risk Managers International, Inc.

8. Any and all documents reflecting disbursements in cash, check, or wire transfer between Corporate Underwriters, Ltd. and Risk Managers International, Inc. regarding the solicitation and/or procurement of insurance to any risk resident, located, or to be performed in Texas.

9. All documentary material regarding the financial net worth of Risk Managers International, Inc. from 1985 to the present including but not limited to financial statements, audits, compilations, and/or loan applications.

10. All documentary material concerning or relating to the payment of salaries, expenses or other compensation for Risk Managers International, Inc., its agents, officers, directors and employees paid by Corporate Underwriters, Ltd.

11. All documentary material reflecting the sale or purchase of assets for investment, for use as equipment, supplies, or other business purposes of Risk Managers International, Inc.

12. All documentary material concerning or in any way relating to any income or receipts earned on the assets, investments or property of Corporate Underwriters, Ltd.

13. All documentary material concerning or in any way relating to any payments either by check, in cash, wire transfer or property, either real or personal, made to Risk Managers International, Inc., in connection with any agreement

pertaining to insurance involving Corporate Underwriters, Ltd., Inc.

14. Any and all insurance treaties or contracts or any other agreement(s) between Risk Managers International, Inc., Herschel Hancock, Nyle Large, Hugh Thompson, and/or Corporate Underwriters, Ltd.

15. Any and all insurance policy(ies) covering any Texas resident(s), and/or entity(ies) entitled to conduct business in Texas in which Risk Managers International, Inc. or Corporate Underwriters, Ltd. was represented to be the insurer.

16. Any documentary material including certificates of insurance coverage or other evidence of insurance issued to Texas residents and/or entities entitled to do business in Texas by, for or through Risk Managers International, Inc. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

17. Any documentary material relating to contracts and/or agreements with agents or other persons directly or indirectly marketing, soliciting, selling or otherwise engaged in the business of insurance in Texas as defined by the Texas Insurance Code Article 1.14-1 on behalf of Risk Managers International, Inc. and/or Corporate Underwriters, Ltd.

18. Any documentary material relating to claims made by Texas residents and/or entities entitled to do business in Texas pursuant to any policy or coverage for which Risk Managers International, Inc. and/or Corporate Underwriters, Ltd. was represented to be the insurer with respect to risks resident, located or to be performed in Texas.

19. Any documentary material relating to claims paid by Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

20. All documentary material relating to the renewal of insurance coverage issued with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer. This request includes but is not limited to: correspondence, policies, endorsements, and premium checks.

21. All documentary material relating to any new insurance coverage issued with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer. This request includes but is not limited to: correspondence, policies, endorsements, and premium checks.

22. All documentary material relating to the effective dates of any and all of the insurance policy forms or contracts where Risk Managers International, Inc. and/or Corporate Underwriters, Ltd. was represented to be the insurer and with respect to risks resident, located, or to be performed in Texas.

23. All documentary material including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd. or any of its officers, employees, agents, or representatives and Michael Sterlacci, or any of his officers, employees, agents

or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

24. All documentary material including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd. or any of its officers, employees, agents, or representatives and James Maley, or any of his officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

25. All documentary material including correspondence or agreements between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd. or any of their officers, employees, agents, or representatives and Augustine and associates, or any officer, employee, representative, servant or agent of Augustine and Associates with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

26. All documentary material including any solicitations from Risk Managers International, Inc. and/or Corporate Underwriters, Ltd. to any and all insurance agents or other persons concerning the marketing of any insurance products of Risk Managers International, Inc. and/or Corporate Underwriters, Ltd. in Texas, whether in whole or in part with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

27. All documentary material relating to insurance coverage for risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

28. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd. and Al Lehman, AML & Associates, P. O. Box 815728, Dallas, Texas 75381-5728, or any of his officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

29. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Sunbelt Express, Inc., P. O. Box 461845, Garland, Texas 75046, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

30. All documents including correspondence or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and C & W Enterprises, P. O. Box 5248, San Angelo, Texas 76902, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

31. All documents including correspondence or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Frenchy's Creole Fried Chicken, Inc., 6830 Mykawa Road, Houston, Texas 77033, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

32. All documents including correspondence or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Administaff, Inc., Four Kingwood Place, Kingwood, Texas 77339, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

33. All documents including correspondence or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Aleman Food Service, 511 Jackson Keller, P. O. Box 13440, San Antonio, Texas 78213, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

34. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Alliance Temporary Service, 4920 N. Meridian, Oklahoma City,

Oklahoma 73112, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

35. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Berryman Products, 3800 Mill Road, Arlington, Texas 76011, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

36. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Big Billy Barrett Mazda, Volkswagon, 11500 E. Northwest Highway, Dallas, Texas 75228, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

37. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Cabaj Enterprises, Inc., 1605 N. Hampton, De Soto, Texas 75115, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

38. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Crawford and Company, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

39. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Southwest Adjusters, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

40. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Custom Conveyor Company, P. O. Box 59448, Dallas, Texas 75229, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

41. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Our Staff, Inc., or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in

Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

42. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Our Staff, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

43. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Staff Professionals, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

44. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and BeneCorp, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

45. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Alliance Temporary Services, Inc., or any of its officers, employees,

agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

46. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Beneficial Personnel Services, Inc., or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

47. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Atra Corporation, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

48. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Staffservices of North Texas, Inc., or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

49. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and American

Risk Management, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

50. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Staff Management Services, or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

51. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Diversified Employee Leasing, Inc., or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

52. All documents including correspondence, agreements or discussions between Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., or any of their officers, employees, agents, or representatives and Staffworks, Inc., or any of its officers, employees, agents or representatives with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

53. All documents which demonstrate any and all premium dollars obtained by or sent to Corporate Underwriters, Ltd. by anyone insured by Corporate

Underwriters, Ltd. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

54. All documents which demonstrate any and all premium dollars obtained by or sent to Risk Managers International, Inc. by anyone insured by Corporate Underwriters, Ltd. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

57. All documents representing an invitation to Corporate Underwriters, Ltd. to make a premium price quotation that were received by Corporate Underwriters, Ltd. and/or Risk Managers International, Inc. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

58. All documents that represent a response by Corporate Underwriters, Ltd. and/or Risk Managers International, Inc. to a letter requesting a premium price quotation that were received by Corporate Underwriters, Ltd. and/or Risk Managers International, Inc. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

59. All documents that are bank statements for accounts in the name of or for the benefit of Risk Managers International, Inc. or Corporate Underwriters, Ltd. pertaining to any funds or other compensation received from the sale of insurance with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

60. All records of any bank account held in Texas in the name of or for the benefit of Risk Managers International, Inc. or Corporate Underwriters, Ltd. pertaining to any funds or other compensation received from the sale of insurance with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc., was represented to be the insurer.

Respectfully submitted,

DAN MORALES
Attorney General of Texas

WILL PRYOR
First Assistant
Attorney General

MARY F. KELLER
Executive Assistant
Attorney General

CLYDE FARRELL
Chief, Consumer
Protection Division

EDNA RAMON BUTTS
Assistant Attorney General
Chief, Finance Division

EVERETTE JOBE
Assistant Attorney General
Chief, Insurance, Banking
and Securities Division

LINDA IBACH SHAUNESSY
Assistant Attorney General
Finance Division
State Bar No. 10382920
P.O. Box 12548
Austin, Texas 78711-2548
(512) 463-2018
(512) 477-2348 - Telecopier

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing STATE OF TEXAS' FIRST AMENDED DOCUMENT PRODUCTION REQUEST TO CORPORATE UNDERWRITERS, LTD. has been hand delivered to the following attorneys of record and sent by U.S. Mail, certified, return receipt requested to the following attorney of record on this the ____ day of September, 1991, to:

John Holman Barr HAND DELIVERED
BURT BARR & ASSOCIATES
304 South Record Street
Dallas, Texas 75202

Hector DeLeon HAND DELIVERED
Karen Key Johnson
DeLEON, BOGGINS & RICHARDS
480 Austin Centre
701 Brazos
Austin, Texas 78701

Terry Scarborough — HAND DELIVERED
Jody Hageman
JENKINS & GILCHRIST
100 Congress, Suite 1800
Austin, Texas 78701

Marc Richman — CERTIFIED MAIL
306 S. Record Street
Dallas, Texas 75202

LINDA IBACH SHAUNESSY
Assistant Attorney General

Corpundr\rfpcu.2

D-1

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE, Plaintiffs,	§	IN THE DISTRICT COURT
VS.	§	
RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD., Defendants.	§	OF TRAVIS COUNTY, TEXAS
	§	299TH JUDICIAL DISTRICT

STATE OF TEXAS' FIRST AMENDED SET OF INTERROGATORIES TO CORPORATE UNDERWRITERS, LTD.

TO: Corporate Underwriters, Ltd., by and through its attorney of record Hector DeLeon, DELEON, BOGGINS & RICHARDS, 480 Austin Centre, 701 Brazos, Austin, Texas 78701

Pursuant to Rule 168 of the Texas Rules of Civil Procedure, the State of Texas, Plaintiff, files this its First Set of Interrogatories to Defendant Corporate Underwriters, Ltd.

1. Please take notice that the parties to whom these Interrogatories are addressed are hereby required, pursuant to the provisions of Rule 168, Texas Rules of Civil Procedure, to serve upon the undersigned attorney of record for the party propounding same their answers in writing under oath to the Interrogatories listed below. It is required that (i) said Interrogatories be answered separately and fully in writing under oath, (ii) the answers be signed and verified by the persons making them (iii) the parties upon whom these Interrogatories are being served shall serve a copy of the answers to the undersigned attorney within thirty (30) days after service of the Interrogatories or within such further time as the Court may allow on motion and notice, (iv) a true copy of the answers be served upon all the parties to this suit or their attorneys. The answers, subject to any objections as to

admissibility, may be used only against the party(s) answering these Interrogatories.

These Interrogatories are deemed to be continuing, such that the parties answering same upon acquiring any information responsive to these Interrogatories after the service of answers hereto which indicates that the answer was incorrect or incomplete when made or has become incomplete or incorrect is required to service Supplemental Answers containing such later acquired information may preclude you from introducing evidence at trial relating to the subject matter of such interrogatories.

This discovery request is covered by the following instructions and definitions:

I.

INSTRUCTIONS AND DEFINITIONS

As used in these interrogatories, the following words and terms shall mean and include the following:

A. As used herein, the terms "you" and "your" shall mean Corporate Underwriters, Ltd., its attorneys, officers, agents, employees, and representatives.

B. As used herein, the terms "Corporate Underwriters, Ltd." and "CU" shall mean Corporate Underwriters, Ltd., its attorneys, officers, agents, employees, and representatives.

C. As used herein, the terms "Risk Managers International, Inc." and "RMI" shall mean Risk Managers International, Inc., its attorneys, officers, agents, employees, and representatives.

D. As used herein, the terms "Defendant" shall mean Corporate Underwriters, Ltd., its attorneys, officers, agents, employees, and representatives.

E. The term "documents" shall mean all writings of every kind, source, and authorship, both originals and all nonidentical copies thereof, in your possession, custody, or control, or known by you to exist, irrespective of whether the

writing is one intended for or transmitted internally by you, or intended for or transmitted to any other person or entity, including without limitation any government agency, department, administrative, or private entity or person. The term shall include handwritten, typewritten, printed, photocopied, photographic, or recorded matter. It shall include communications in words, symbols, pictures, sound recordings, films, tapes, and information stored in, or accessible through, computer or other information storage or retrieval systems, together with the codes and/or programming instructions and other materials necessary to understand and use such systems. For purposes of illustration and not limitation, the term shall include: affidavits; agendas; agreements; analyses; announcements; bills, statements, and other records of obligations and expenditures; books; brochures; bulletins; calendars; canceled checks, vouchers, receipts and other records of payments; charts, drawings; check registers; checkbooks; circulares; collateral files and contents; contracts; corporate by-

laws; corporate charters; correspondence; credit files and contents; deeds of trust; deposit slips; diaries, drafts; files; guaranty agreements; instructions; invoices; ledgers, journals balance sheets, profit and loss statements, and other sources of financial data; letters, logs, notes, or memoranda of telephonic or face-to-face conversations; manuals; memoranda of all kinds, to and from any persons, agencies, or entities; minutes; minute books; notes; notices; parts lists; papers; press releases; printed matter (including published books, articles, speeches, and newspaper clippings); purchase orders; records; records of administrative technical, and financial actions taken or recommended; reports; safety deposit boxes and contents and records of entry; schedules; security agreements; specifications; statement of bank accounts; statements, interviews; stock transfer ledger; technical and engineering reports, evaluations, advice, recommendations, commentaries, conclusions, studies, test plans, manuals, procedures, data, reports, results, and conclusions; summaries, notes, and other records and

recordings of any conferences, meetings, visits, statements, interviews or telephone conversations; telegrams; teletypes and other communications sent or received; transcripts of testimony; UCC instruments; workpapers; and all other writings, the contents of which relate to, discuss, consider, or otherwise refer to the subject matter of the particular discovery requested.

F. The term "documents" shall also include, but shall not be limited to: 1) a contract of insurance; 2) an application for insurance; 3) any records relating to premiums, commissions, membership fees, assessments, dues, or other consideration for any insurance; 4) any records relating to the solicitation or negotiation of insurance or renewals; 5) any records relating to the dissemination of information as to coverage or rates; 6) any records relating to the inspection of risks; 7) any records relating to the investigation or adjustment of claims or losses; and 8) any records relating to the transaction of matters subsequent to the effectuation of a contract of insurance.

G. "Person": The term "person" shall include individuals, associations, partnerships, corporations, and any other type of entity or institution whether formed for business purposes or any other purposes.

H. "Identify" or "Identification":

a. When used in reference to a person, "identify" or "identification" means to state his/her full name, present or last known address and telephone number.

b. When used in reference to a public or private corporation, governmental entity, partnership or association, "identify" or "identification" means to state its full name, present or last known business address and telephone number.

c. When used in reference to a document, "identify" or "identification" shall include statement of the following:

(a) the title, heading, or caption, if any, of such document;

(b) the identifying number(s), letter(s), or combination thereof, if any; and the

significance or meaning of such number(s), letter(s), or combination thereof, it necessary to an understanding of the document and evaluation of any claim of protection from discovery.

(c) the date appearing on such document; if no date appears thereon, the answer shall so state and shall give the date or approximate date on which such document was prepared.

(d) the number of pages and the general nature or description of such document (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.), with sufficient particularity so as to enable such document to be precisely identified;

(e) the name and capacity of the person who signed such document; if it was not signed the answer shall so state and shall give the name of the person or persons who prepared for it;

(f) the name and capacity of the person to whom such document was addressed and the name and capacity of such person, other than such addressee, to whom such document, or a copy thereof, was sent; and

(g) the physical location of the document and the name of its custodian or custodians.

I. "Insurance": the term "insurance" is defined as a contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils. The party agreeing to make the compensation is called the "insurer." A contract whereby one undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event and is applicable only to some contingency or act to occur in future. An agreement by which one party for a consideration promises to pay money or its equivalent or to do an act valuable to other party upon destruction, loss, or injury of something in which other party has an interest. An insurance contract can be called a "policy."

J. "Premium": the term "premium" is defined as the sum paid or agreed to be paid by an insured to the insurer as the consideration for the insurance. The price for insurance protection for a specified period of exposure.

K. "Insured": the term "insured" is defined as the person whose risks are indemnified or covered by the insurer. Further "insured" is defined as the person who obtains or is otherwise covered by insurance on his health, life, or property. The "insured" in a policy is not limited to the insured named in the policy, but applies to anyone who is insured under the policy.

L. "Solicitation": the term "solicitation" is defined as: 1) proposing to make, as an insurer, an insurance contract; 2) proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety; 3) disseminating information as to insurance coverage or insurance rates; 4) receiving any information as to insurance coverage or insurance rates; 5) forwarding applications for insurance; 6) forwarding requests for insurance; 7) delivering policies or contracts; and 8) in any manner representing or assisting a person or insurer in the transaction of insurance.

M. "Risk": the term "risk" is defined as the casualty or subject matter contemplated in a contract of insurance.

N. "The business of insurance": the term "the business of insurance" is defined as 1) the making of or proposing to make, as an insurer, an insurance contract; 2) the making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety; 3) the taking or receiving of any application for insurance; 4) the receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof; 5) the issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state; 6) directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or inurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of

information as to coverage or rates, or forwarding of applications. or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state.

TIME PERIOD

The time period for all interrogatories herein is to be from January 1, 1985, to the present, unless a specific interrogatory designates a different time period.

INTERROGATORY NO. 1:

Identify all persons having knowledge of any facts relating to the State of Texas' claims, or Defendant's defenses in this case.

ANSWER NO. 1:

INTERROGATORY NO. 2:

For each person you have identified in answer to interrogatory number 1, state the basis for and substance of the knowledge you believe the person has or may have.

ANSWER NO. 2:

INTERROGATORY NO. 3:

For the past five (5) years, identify by: style, cause number, court, county, and state, any lawsuits or administrative proceedings filed against you alleging fraud, deceptive trade practices, misrepresentation, unconscionable action or violation of any insurance laws.

ANSWER NO. 3:

INTERROGATORY NO. 4:

Identify any and all cease and desist orders which have been issued against you in the last five years and give the: (a)

name of the state issuing the cease and desist order and (b) date the cease and desist order was issued.

ANSWER NO. 4:

INTERROGATORY NO. 5:

Identify each person from whom you or your attorney, agent, or representative have obtained any written or recorded statement or report regarding the facts relating to this lawsuit, and identify the person(s) having possession, custody, or control of such statements and reports. This request includes, but is not limited to:

(a) any written statement signed or otherwise adopted or approved by the person making it; and

(b) any stenographic, mechanical, electrical, or other type of recording, or any transcription thereof which is a substantially verbatim recital of a

statement made by the person and contemporaneously recorded.

ANSWER NO. 5:

INTERROGATORY NO. 6:

Has Defendant been correctly named in this lawsuit, and has Defendant been sued in the proper legal capacity?

ANSWER NO. 6:

INTERROGATORY NO. 7:

Identify all insurance claims received by you with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters was represented to be the insurer.

ANSWER NO. 7:

INTERROGATORY NO. 8:

Identify individually as to each claim identified in Interrogatory No. 7 as to whether it was paid, denied, or is still under review.

ANSWER NO. 8:

INTERROGATORY NO. 9:

State all facts which you contend tend to refute Plaintiffs' claims that Corporate Underwriters, Ltd. conducted the business of unauthorized insurance in Texas as defined in Tex. Ins. Code 1.14-1 or substantiate any defenses you claim.

ANSWER NO. 9:

INTERROGATORY NO. 10:

Identify all agreements or contracts whether oral or written which Corporate Underwriters, Ltd. entered into with Risk Managers International, Inc., with regard to the business

of insurance as defined by Tex. Ins. Code Art. 1.14-1(2)(a) where the risk is located, resident or to be performed in Texas.

ANSWER NO. 10:

INTERROGATORY NO. 11:

Identify any and all premiums, fees, membership fees, commissions, assessments, dues, and other consideration which was paid to Corporate Underwriters, Ltd. with respect to risks resident, located, or to be performed in Texas for insurance policies for which Corporate Underwriters, Ltd. was represented to be the insurer.

ANSWER NO. 11:

INTERROGATORY NO. 12:

Identify all persons employed by Corporate Underwriters, Ltd. and all directors and officers of Corporate Underwriters, Ltd. from January 1, 1985, up to and through the present date.

ANSWER NO. 12:

INTERROGATORY NO. 13:

Identify all non-employee accountants and/or bookkeepers retained by Corporate Underwriters, Ltd. from January, 1985 through the present.

ANSWER NO. 13:

INTERROGATORY NO. 14:

For each accountant and/or bookkeeper identified in interrogatory no. 13, state the exact purpose for which they were retained, such as, but not limited to, preparation of income tax returns, audits, financial statements, etc.

ANSWER NO. 14:

INTERROGATORY NO. 15:

Identify all bank and/or savings and loan accounts of any type held in the name of and/or for the benefit of Corporate

Underwriters, Ltd. from January 1, 1985 to the present, giving the name and address of each financial institution and the account number.

ANSWER NO. 15:

INTERROGATORY NO.16:

State the net worth of Corporate Underwriters, Ltd. for each year from 1985 to the present.

ANSWER NO. 16:

INTERROGATORY NO. 18:

List each and every insurance policy with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

ANSWER NO. 18:

INTERROGATORY NO. 19:

Identify each person or entity you contend may be responsible for paying any part of the workers compensation insurance claims for policies with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters or Risk Managers International, Inc. was represented to be the insurer.

ANSWER NO. 19:

INTERROGATORY NO. 20:

For any person or entity identified in answer to interrogatory No. 19, state the reason(s) you contend they may be responsible and all facts supporting your contention.

ANSWER NO. 20:

INTERROGATORY NO. 21:

Identify each and every person who purchased insurance from, by, or through Corporate Underwriters, Ltd. from

January 1, 1985 to the present where the risk is resident, located, or to be performed in Texas.

ANSWER NO. 21:

INTERROGATORY NO. 22:

Identify each and every person and/or insurance agent who has disseminated information as to insurance coverage or rates with respect to an insurance contract where the risks are resident, located, or to be performed in Texas and Corporate Underwriters, Ltd. is represented to be the insurer.

ANSWER NO. 22:

INTERROGATORY NO. 24:

Identify each and every person who has received commission(s) or any type of compensation from Corporate Underwriters, Ltd. with respect to the business of insurance as defined by Art. 1.14-1 of the Texas Insurance Code from January 1, 1985, to the present where the risks are resident,

located, or to be performed in Texas and for which Corporate Underwriters was represented to be the insurer.

ANSWER NO. 24:

INTERROGATORY NO. 25:

Describe any and all financial information known to you about Transworld Reinsurers Ltd. of the Turks and Caicos Islands, British West Indies.

ANSWER NO. 25:

INTERROGATORY NO. 26:

Describe the exact nature of the business and/or legal relationship between Risk Managers International, Inc. and Corporate Underwriters, Ltd. with respect to the business of insurance as defined by Art. 1.14-1(2)(a) of the Texas Insurance Code from January 1, 1985, to the present.

ANSWER NO. 26:

INTERROGATORY NO. 27:

Describe the exact nature of the business and/or legal relationship between Corporate Underwriters, Ltd. and Transworld Reinsurers, Ltd. of the Turks and Caicos Islands, British West Indies with respect to the business of insurance as defined by Art. 1.14-1(2)(a) of the Texas Insurance Code from January 1, 1985, to the present.

ANSWER NO. 27:

INTERROGATORY NO. 28:

Describe in detail any settlement, agreement, deal or other understanding of any kind whatsoever reached with any person, firm, corporation, partnership, or legal entity whatsoever in respect to this lawsuit (verbal, written, or otherwise) including, but not limited to "Mary Carter" agreements. This interrogatory seeks but is not limited to information concerning agreements or understandings of any

kind whatsoever, including past, present, or future settlements, deals, agreements, understandings, and conduct by or between you and any other legal entity whatsoever.

ANSWER NO. 28:

INTERROGATORY NO. 29:

Identify each person either participating in the preparation of the answers to these interrogatories or supplying information used in such preparation, and indicate the interrogatories with respect to which he or she was involved.

ANSWER NO. 29:

Respectfully submitted,

DAN MORALES
Attorney General of Texas

WILL PRYOR
First Assistant
Attorney General

MARY F. KELLER
Deputy Attorney General
for Litigation

CLYDE FARRELL
Chief, Consumer
Protection Division

EDNA RAMON BUTTS
Assistant Attorney General
Chief, Finance Division

EVERETTE JOBE
Assistant Attorney General
Chief, Insurance, Banking,
and Securities Section

LINDA IBACH SHAUNESSY
Assistant Attorney General
Finance Division
State Bar No. 10382920
P.O. Box 12548
Austin, Texas 78711-2548
(512) 463-2018
(512) 477-2348 - Telecopier

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing STATE OF TEXAS' FIRST AMENDED SET OF INTERROGATORIES TO CORPORATE UNDERWRITERS, LTD. has been hand delivered to the following attorneys of record and sent by U.S. Mail, certified, return receipt requested to the following attorney of record on this the ____ day of September, 1991, to:

John Holman Barr — HAND DELIVERED
BURT BARR & ASSOCIATES
304 South Record Street
Dallas, Texas 75202

Hector DeLeon — HAND DELIVERED
DeLEON, BOGGINS & RICHARDS
480 Austin Centre
701 Brazos
Austin, Texas 78701

Terry Scarborough — HAND DELIVERED
JENKINS & GILCHRIST
600 Congress, Suite 2200
Austin, Texas 78701

Marc Richman — CERTIFIED MAIL
306 S. Record Street
Dallas, Texas 75202

_____
LINDA IBACH SHAUNESSY
Assistant Attorney General

corpundr/intcu.2

COUNTY OF TRAVIS
STATE OF TEXAS

John K. Dietz
District Judge
250th District Court

County Courthouse
P.O. Box 1748
Austin, Texas 78767

February 6, 1992

TO ALL COUNSEL OF RECORD:

Re: Cause No. 471,568; State of Texas v. Risk Managers International, Inc.

Dear Counsel:

I have completed the incamera inspection of the materials submitted to me by Risk Managers, Inc.

The following do not have to be produced because RMI has shown that the insurance was independently procured outside of Texas.

(1) AKAL Security
(2) Delta Gulf Corp.
(3) Jimmie Tucker Trucking
(4) Alliance Temporary Services
(5) Associated Personnel Services
(6) Coast Industries
(7) Dean's Security Professionals
(8) Indiana Transportation Services
(9) Transport Leasing

The following are to be produced instanter to the State of Texas.

(1) Administaff
(2) ATRA Corp.
(3) Benecorp
(4) BPS of TX. Inc.
(5) Berryman
(6) Bollinger
(7) M & B Staff Leasing
(8) Martin & Martin
(9) Staff One
(10) Staff Services
(11) Staff Works
(12) Staff Professionals
(13) Triangle Machine & Manufacturing
(14) Aleman
(15) Alternative Business Concepts, Inc.
(16) Bay-Pac
(17) Big Billy Barrett Volkswagen
(18) C & W Enterprises
(19) CABAJ
(20) Certified Services
(21) Corporate Compensation
(22) Custom Conveyor Co.
(23) Diversified Employee Leasing
(24) Employers Select Management
(25) Frenchy's Creole Fried Chicken/Frenchy's Sausage
(26) J. Electric Co.
(27) Merida, Inc.
(28) Pinocchio's Pizza
(29) RNW Associates
(30) Specialty Vehicle
(31) Speedy's Food Service.

Rather than do an item by item analysis of each file, I can tell you that the following factors influenced my decision that there was insufficient evidence of independently procured insurance in the thirty-one files ordered produced.

(1) Corporate Underwriters maintained a depository account 0122804 at Interfirst, later NCNB in Dallas, Texas. All premium checks where the backside was copied were deposited in that account.

(2) Most of the "Workers Compensation & employers Liability Insurance Policy" contain the following first sentence "In return for the payment of the premium [which takes place in Texas] and subject to all terms of this policy, we agree with you as follows."

(3) In many instances the delivery of price quotations, policies, etc. were by "Insurance Consultants" or by Risk Managers International employees, i.e. Texas citizens acting in Texas with Texas customers, insuring Texas Workers, paid for by checks deposited in National banks situated in Texas.

and finally

(4) Two memos approximately a year apart which cost substantial doubt upon the procedure wherein CV claims that the negotiations occurred entirely outside of Texas. The February 15, 1989, memo by RMI to one of its "consultants" indicates that there is "... the usual written request to Corporate Underwriters LTD (on Diversifieds' letterhead) for acceptance of the Premium Quotatum. Please have it dated 2-13-89."

The second memo, dated May 2, 1990 shows that the same procedure of having a letter to CV, as a ruse.

Res ipsa loquitor.

Respectfully

/s/

JOHN K. DIETZ
Judge, 250th District Court
Travis County, Texas

JKD/pc

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE, Plaintiffs,	§	IN THE DISTRICT COURT
VS.	§	
RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD., Defendants.	§	OF TRAVIS COUNTY, TEXAS
	§	299TH JUDICIAL DISTRICT

ORDER OF FEBRUARY 6, 1992 REGARDING THE DISCOVERY OBJECTIONS OF DEFENDANT RISK MANAGERS INTERNATIONAL, INC.

On the 6th day of February, 1992, in the above-styled and numbered cause came before this Court The State of Texas and the State Board of Insurance ("plaintiffs") and defendant, Risk Managers International, Inc. ("RMI") and presented their

arguments to several motions set before this Court. Plaintiffs and defendant appeared by and through their counsel of record. Counsel for Nyle Large had notice of the hearing but did not appear. The Court, having heard and considered argument of counsel, is of the following opinion:

It is hereby ORDERED, ADJUDGED and DECREED that:

1. RMI's objections to discovery that the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence since any act of the business of insurance engaged in by RMI fall within the statutory exception set out in Art. 1.14-1 §§2(b)(4) and 12 of the Texas Insurance Code are hereby OVERRULED as to the following entities:

a) Administaff
b) ATRA Corp.
c) Benecorp
d) BPS of Tx., Inc.
e) Berryman
f) Bollinger
g) M & B Staff Leasing

h) Martin & Martin
i) Staff One
j) Staff Services
k) Staff Works
L) Staff Professionals, Inc.
m) Triangle Machine & Manufacturing
n) Aleman
o) Alternative Business Concepts, Inc.
p) Bay-Pac
q) Big Billy Barret Volkswagen
r) C & W Enterprises
s) Cabaj
t) Certified Services
u) Corporate Compensation
v) Custom Conveyor Co.
w) Diversified Employee Leasing
x) Employer's Select Management
y) Frenchy's Creole Chicken/ Frenchy's Sausage
z) J. Electric Co.
aa) Merida, Inc.
bb) Pinocchio's Pizza
cc) RNW Associates
dd) Specialty Vehicle, and
ee) Speedy's Food Service.

Defendant's objections to discovery, that the information sought is not reasonably calculated to lead to the discovery of admissible evidence is GRANTED since any of the business of insurance engaged in by defendant in conjunction with the following entities, falls within the statutory exceptions as set out

in Article 1.14-1 §2(b)(4) and 12 of the Texas Insurance Code. Therefore, defendant does not have to produce any discovery relating to the following entities:

a) AKAL Security
b) Delta Gulf Corp.
c) Jimmie Tucker Trucking
d) Alliance Temporary Services, Inc.
e) Associated Personnel Services, Inc.
f) Coast Industries
g) Dean's Security Professionals,
h) Indiana Transportation Services, and
i) Transport Leasing.

2. With the exception of financial information to be the subject of subsequent hearing, RMI's objections to discovery propounded by the plaintiffs that the discovery is burdensome, harassing, and irrelevant are hereby OVERRULED.

3. The interrogatories propounded to RMI by the plaintiff are hereby considered to consist of 60 answers.

4. RMI's objection that plaintiffs have served RMI with excessive number of interrogatories is overruled.

Plaintiffs' interrogatories are not objectionable because they require sixty (60) answers.

5. RMI's objection to the production of documents regarding Corporate Underwriters, Ltd.'s superior right to and ownership of the documents which plaintiffs have requested is OVERRULED. RMI must produce all documents responsive to the plaintiffs' requests for which another privilege is not claimed and for which RMI maintains possession, custody, or control thereof.

SIGNED this the 12th day of June, 1992, NUNC PRO TUNC February 6, 1992.

/S/
JUDGE JOHN K. DIETZ

AGREED AS TO FORM:

/S/
LINDA I. SHAUNESSY
ATTORNEY FOR
PLAINTIFFS

/S/
TERRY SCARBOROUGH
ATTORNEY FOR DEFENDANT,
RISK MANAGERS
INTERNATIONAL, INC.

[LIS\CORPUNDR\ORDDISC1.RMI]

ORDER OF FEBRUARY 6, 1992 REGARDING THE DISCOVERY OBJECTIONS OF DEFENDANT RISK MANAGERS INTERNATIONAL, INC.

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE, Plaintiffs,	§	IN THE DISTRICT COURT
VS.	§	
RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD., Defendants.	§	OF TRAVIS COUNTY, TEXAS
	§	299TH JUDICIAL DISTRICT

ORDER OF FEBRUARY 6, 1992 REGARDING THE DISCOVERY OBJECTIONS OF DEFENDANT HERSCHEL HANCOCK

On the 6th day of February, 1992, in the above-styled and numbered cause came before this Court The State of Texas, State Board of Insurance ("plaintiffs") and Herschel Hancock, individually and as president of Risk Managers International,

Inc. ("defendant") and presented arguments on several motions set before this Court. Plaintiffs and defendant appeared by and through their counsel of record. Counsel for Nyle Large had notice of the hearing but did not appear. The Court, having heard and considered argument of counsel, is of the following opinion:

It is hereby ORDERED, ADJUDGED and DECREED that:

1. Defendant's objections to discovery that the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence since any act of the business of insurance engaged in by defendant falls within the statutory exception set out in Art. 1.14-1 §§2(b)(4) and 12 of the Texas Insurance Code are hereby OVERRULED as to the following entities:

a) Administaff
b) ATRA Corp.
c) Benecorp
d) BPS of Tx., Inc.
e) Berryman

f) Bollinger
g) M & B Staff Leasing
h) Martin & Martin
i) Staff One
j) Staff Services
k) Staff Works
L) Staff Professionals, Inc.
m) Triangle Machine & Manufacturing
n) Aleman
o) Alternative Business Concepts, Inc.
p) Bay-Pac
q) Big Billy Barret Volkswagen
r) C & W Enterprises
s) Cabaj
t) Certified Services
u) Corporate Compensation
v) Custom Conveyor Co.
w) Diversified Employee Leasing
x) Employer's Select Management
y) Frenchy's Creole Chicken/ Frenchy's Sausage
z) J. Electric Co.
aa) Merida, Inc.
bb) Pinocchio's Pizza
cc) RNW Associates
dd) Specialty Vehicle, and
ee) Speedy's Food Service.

Defendant's objections to discovery, that the information sought is not reasonably calculated to lead to the discovery of admissible evidence is GRANTED since any act of the business of insurance engaged in by defendant in conjunction with the

following entities, falls within the statutory exceptions as set out in Article 1.14-1 §2(b)(4) and 12 of the Texas Insurance Code. Therefore, defendant does not have to produce any discovery relating to the following entities.

a) AKAL Security
b) Delta Gulf Corp.
c) Jimmie Tucker Trucking
d) Alliance Temporary Services, Inc.
e) Associated Personnel Services, Inc.
f) Coast Industries
g) Dean's Security Professionals,
h) Indiana Transportation Services, and
i) Transport Leasing.

2. With the exception of financial information and information for which defendant claims an exemption from discovery based on the Fifth Amendment and Sections 9 and 10 of the Texas Constitution, defendant's objections to discovery propounded by the plaintiffs that the discovery is burdensome, harassing, and irrelevant are hereby OVERRULED.

3. Hancock's objection that plaintiffs have served Hancock with excessive number of interrogatories is overruled.

Plaintiffs' interrogatories are not objectionable because they require sixty (60) answers.

4. Any interrogatories propounded by the plaintiffs or defendant which request the answering party to identify a document may be responded to by the production of that document for inspection and copying.

5. The defendant's objections to the production of documents regarding Corporate Underwriters, Ltd.'s superior right to and ownership of the documents which plaintiffs have requested is OVERRULED. Defendant must produce all documents responsive to the plaintiffs' requests for which another privilege is not claimed and for which defendant maintains possession, custody, or control thereof.

6. The Court reserves its ruling to a later hearing on the discovery objections made by defendant wherein defendant has asserted his right against self-incrimination pursuant to the Fifth Amendment of the United States Constitution as made

applicable to the States by the Fourteenth Amendment and Article I §§9 and 10 of the Texas Constitution.

SIGNED this the ____ day of _____, 1992, NUNC PRO TUNC February 6, 1992.

/S/
JUDGE JOHN K. DIETZ

AGREED AS TO FORM:

/S/
LINDA I. SHAUNESSY
ATTORNEY FOR
PLAINTIFFS

/S/
ALICIA CURRAN
ATTORNEY FOR HERSCHEL HANCOCK AS AN INDIVIDUAL

/S/
TERRY SCARBOROUGH
ATTORNEY FOR HERSCHEL
HANCOCK AS PRESIDENT
OF RISK MANAGERS
INTERNATIONAL, INC.

[LIS\CORPUNDR\ORDDISC1.HH]

No. 92-10-50

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1992

IN RE: RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD.,

---

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS TO THE HONORABLE JOHN K. DIETZ, PRESIDING JUDGE OF THE 250TH JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS

APPENDIX H-M

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WILL PRYOR
First Assistant Attorney General
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Deputy Attorney General
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February 3, 1993

Attorneys for State of Texas
and State Board of Insurance

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

PUBLISHER'S NOTE:

ORIGINAL PAGINATION IS NOT CONTINUOUS.

VOLUME 5

NO. 471,568

THE STATE OF TEXAS	*	IN THE 299TH JUDICIAL
AND THE STATE BOARD	*	
OF INSURANCE	*	
	*	
VS.	*	DISTRICT COURT OF
	*	
RISK MANAGERS	*	
INTERNATIONAL, INC.,	*	TRAVIS COUNTY, TEXAS

- -

STATEMENT OF FACTS

- -

BEFORE:
THE HONORABLE JOHN K. DIETZ, JUDGE

- -

APPEARANCES:
MS. LINDA IBACH SHAUNESSY,
MS. KAREN PETTIGREW and
MS. DIANE BARLOW-SPARKMAN,
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Austin, Texas 78711-2548

ATTORNEYS FOR THE PLAINTIFF

- - - - - -

MR. TERRY SCARBOROUGH (Jenkens & Gilchrist),
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480 Austin Centre, Austin, Texas 78701.

MS. ALICIA CURRAN (Burt Barr & Associates),
Dallas, Texas 75202
ATTORNEYS FOR THE DEFENDANTS

- - - - - -

BE IT REMEMBERED that on the 10th day of March, 1992 came on for hearing the above styled and numbered cause in the 250th Judicial District Court of Travis County, Texas before Honorable John K. Dietz, Judge, whereupon the following proceedings occurred.

MARCH 10, 1992
PROCEEDINGS

MS. SHAUNESSY: Good afternoon, Your Honor. We have several matters - the Turks & Caicos confidentiality law, the applicability of it, Mr. DeLeon has filed a motion for summary judgment on behalf of Corporate Underwriters as to whether or not worker's compensation insurance can be independently procured, and the State has responded.

And we have a deposition stipulation from Mr. Hancock's deposition because his answer was so long that we agreed to a stipulation, because it was ten lines for every answer and it was kind of expensive.

THE COURT: That's a great tactic when they're making you take the Fifth.

MS. SHAUNESSY: That's right.

THE COURT: Did they talk about Article I, Section 10 of the Texas Constitution, too?

MS. SHAUNESSY: Yes, we had it all.

THE COURT: Now, what else?

MS. SHAUNESSY: The financial discovery issue. And then lastly, I just need a couple of minutes of the Court's time, because we're contemplating --

THE COURT: Settling?

MS. SHAUNESSY: No. We're contemplating that we might have depositions in the Turks & Caicos, after the outcome of your ruling today. I just need a couple of points to clarify that.

MR. DeLEON: I'm going to say at the minimum. I think that's my best guess.

Now, let me be sure I understand what you're asking us to produce. You're not asking us to produce those documents which are being produced by other parties to this litigation. Is that correct?

Like for instance, you've ordered the production of claims files. You're not asking us to produce claims files that are already being produced. Is that right?

THE COURT: Okay. I cannot answer your question meaningfully unless I see the State of Texas' First Document Production Request to Corporate Underwriters, Limited, served on July the 3rd, 1991.

MR. DeLEON: Okay. I believe it is Items 7 and 8, Your Honor. That's what's here.

THE COURT: Let me rely back on my fact person. What is it that's in this document request that they have withheld? All of it?

MS. SHAUNESSY: Yes, Your Honor.

THE COURT: Okay.

MS. SHAUNESSY: But Your Honor, for a compromise for the State, Corporate could produce any document that they're not already producing.

In other words, if Risk Managers is going to produce File XYZ but Corporate also maintains the same file, in order to limit the in camera the State would be happy to have --

THE COURT: Only those non-duplicative items?

MS. SHAUNESSY: Right.

MR. DeLEON: That makes a difference.

THE COURT: Could I just see the document request?

MR. DeLEON: Sure. 7 and 8 are what they've requested.

MS. SHAUNESSY: And that's based on my assumption that Risk no longer is asserting the Turks & Caicos immunity.

MR. DeLEON: I'm not waiving that.

THE COURT: Time out. The Court is recognizing, pursuant to Rule 203, that there exists in the Turks & Caicos Islands, where the situs of Corporate Underwriters is and the domicile of Rashid Bodhanya -- and that it is the law of the Turks & Caicos Islands that they cannot meaningfully answer the discovery propounded by the State in its First Document Production Request served on July the 3rd, 1991, nor can they answer the State of Texas' First Set of Interrogatories served on July the 3rd, 1991, nor can they meaningfully respond to the State's Request for Admissions served on Corporate Underwriters on July the 17th, 1991, and that this is pursuant to the company's ordinance 1981 and the confidential relationships ordinance of 1979 of the Turks & Caicos Islands. And the Court, pursuant to Rule 203, has taken judicial notice of that law.

The Court, pursuant to the Texas Rules of Civil Procedure, 166(b)(4), is going to do an in camera inspection because the defendants, Corporate Underwriters, have asserted a privilege or an exemption from discovery.

MR. DeLEON: Your Honor, when we filed responses, so that the Court will be clear, we did agree to

provide certain of that information. I don't have those responses with me.

It is only with respect to the responses, which I will submit is the majority of those responses, that we would be providing the information in accordance with your ruling.

THE COURT: Here's what 7 and 8 are, which they say are the ones that are primarily germane. The State has requested in its document request all documents which are certificates of incorporation, bylaws and minutes of the board of directors' meetings of Corporate Underwriters. That's going to be submitted to me.

Then the State has requested any and all documents reflecting disbursements in cash, check or wire transfer between Corporate Underwriters and Risk Managers regarding the solicitation and/or procurement of insurance to any Risk resident located or to be performed in Texas.

MR. DeLEON: Your Honor, you may be confused, and it's my fault. When I said 7 and 8, I meant Tabs 7 and 8. You're focusing on Items 7 and 8.

THE COURT: Okay, so that it is much greater than that?

MR. DeLEON: Yes, Your Honor. And I'm sorry, I apologize for that.

THE COURT: 7 is this?

MR. DeLEON: Yes, Your Honor, Tab 7 and Tab 8.

MS. CURRAN: Your Honor, Tab 7 includes our answers to interrogatories and requests for production.

THE COURT: Okay.

MS. BARLOW-SPARKMAN: There were blanket objections, Your Honor, on the basis of the Turks & --

THE COURT: In good faith, you don't have to duplicate that which Risk Managers has already provided. But at some point after we're finished with all of this, one of the tasks that all of us will have to engage is to see where there are holes in the discovery, and then we'll try to address it on that basis.

So for instance, like in that one that I was looking at, if there are wire transfers out of that Interfirst account up in Dallas to the Turks & Caicos or some other oceanic bank and they had gotten that from Risk Managers -- because I suspect that they were behind that -- then you-all don't have to produce it.

But if they haven't gotten it, then you-all need to at least show it to me so that I can look at it and make my great weighing in the sky, and then see where we are.

MR. DeLEON: Okay.

THE COURT: Is that clear enough?

MR. DeLEON: Yes, Your Honor.

THE COURT: Okay. Now, when is that going to happen?

MR. DeLEON: I will get back to my client, and I will get an estimate for the Court as soon as I can.

THE COURT: When is our next date?

MS. SHAUNESSY: April 13th, Your Honor.

THE COURT: Okay. We need to be making progress on this.

MR. DeLEON: Could I produce something in writing to the Court? I'll do my best to get something within two weeks from today. Would that be acceptable to the Court?

THE COURT: You're going to submit something to me within two weeks?

MR. DeLEON: Yes, sir, telling you, "Yes, we can do it and this is the time frame when we can do it."

THE COURT: Yes, but I'm wanting that to happen before April because I've been holding the State back.

MR. DeLEON: Well, I understand. Two weeks would be -- that would be the 24th of March.

THE COURT: That's settlement week. Hector, do you think you might be able to let me know by the 20th?

MR. DeLEON: I can try, I sure can.

THE COURT: Do your best. If you can't, I'll understand. But do your best to let me know before settlement week.

MR. DeLEON: I will try to get something to you by the 20th.

THE COURT: Have we addressed everything we need to address on Turks & Caicos? Is the State satisfied?

MS. SHAUNESSY: Yes, Your Honor.

MS. BARLOW-SPARKMAN: Yes, Your Honor.

MS. SHAUNESSY: It's the State's understanding that Mr. DeLeon will provide to the Court when

he will answer the interrogatories, requests for production and requests for admissions, hopefully by the 20th.

THE COURT: And when he will submit them for an in camera inspection by the Court.

MS. SHAUNESSY: Right. But I understood that he doesn't know what date he's going to be able to do that, that he's just going to give you a letter by the 20th.

THE COURT: Right. Yes, ma'am.

MS. SHAUNESSY: Okay. So then we're all understanding.

THE COURT: Okay.

MS. SHAUNESSY: Now, Your Honor, I'm ready to go on to the next item. I believe it's the Hancock deposition stipulation.

Ms. Curran and I have sent letters back and forth, and we are in agreement with what the stipulation should be. But we would like to have it done in this form so that it will operate as a Rule 11 agreement so that Ms. Curran's client, Mr. Hancock, is not in any way harmed in the future, that the State won't in the future say that he did not perfectly state his Fifth Amendment objection.

But this is solely to save the time and expense of all parties, because his answer was quite lengthy. Would you like to state the stipulation?

MS. CURRAN: We state as our stipulation the following: Mr. Hancock will answer, "I invoke my Fifth Amendment privilege," period.

"I invoke my Fifth Amendment privilege" is defined as follows: "I invoke my Fifth Amendment privilege against

(Off-the-record.)

THE COURT: Well, Mr. Scarborough, this might surprise you. They did not squarely address, as was reported in the Consumer Law Report -- they didn't really confront whether trebling under the DTPA is analogous to any of this.

It wasn't even in the dicta. It just said they argued that. I guess you can't always believe what you read in those things.

(Off-the-record.)

MS. SHAUNESSY: Your Honor, I also have a case that shows that exemplary damages are the same as civil penalties, if that would help the Court.

THE COURT: Okay.

MS. SHAUNESSY: Well, you seem to be interested in the subject.

THE COURT: Okay. The guidance is that I'm not going to get caught in the income tax trap.

MS. SHAUNESSY: Your Honor, the State would go along with Sears, which says that -- in Sears versus Ramirez, in which the Supreme Court said income tax returns aren't required if other information is available that provides the same stuff.

In Sears they provided certified and audited financial statements and reports. That would be acceptable with the State.

These are the State's concerns. We have to assess premium taxes. Premium taxes are based on the total amount of consideration that was paid for insurance.

So I need that so we can establish and figure out the premium taxes that are owed.

Two, the State is concerned about monies that were spent for commissions or consultant fees, anything to like an agent or somebody in furtherance of the insurance transactions.

I'm also concerned because I would like to know the net worth so that I can understand if there are capital and reserves that are being put aside for payment of the claims or not, so I can see, you know, how the claims are being paid, what system is set up to pay the claims so I know, you know, if we're 20 years off from a disaster, two years, one year, whatever. I don't know that sort of thing.

So it's information that I would know their net worth so I know what obligations they have relating to the claims. If they can come up with a workable system, that's fine with the State. We just want the information.

And I, in fact, approached Ms. Curran before the hearing and asked her, would they be willing to provide some information. And Ms. Curran and Mr. DeLeon said no, and I didn't get a chance to talk to Mr. Scarborough.

The State just wants something in the middle. That would be fine. And if that doesn't work and if the information is not fine, then I can come back and ask for different information if I find that the information is not adequate. But we just need a start to solve those three problems.

THE COURT: I will give you-all a ruling, from my perspective, that the request for the trebled damages, et cetera, will be enough to justify the discovery of net worth.

And I will exclude tax returns and work papers, but we need other documents which constitute evidence of net worth from Hancock, RMI and CU, Limited.

Now, if you-all are preserving that to get the wise women and men over at 14th and Colorado to look at it, you may want to reduce that down into an order.

But that's my thinking, that what I'm prepared to do on the basis of what I've read and just my notion of what this is all about, is to extend Lunsford into this area that exemplaries and punitives are pretty much the same, and to the extent that the State has requested documents which reflect net worth other than -- and I'm not ordering the production of tax returns.

MR. DeLEON: Or work papers.

THE COURT: Or work papers at this time. Now, that's not to gainsay if somebody discovers fraud a little bit later on, that is something -- that it doesn't become more germane.

But with respect to the issue of what's the net worth, can they satisfy the penalties that are been applied, can they pay the premium tax that we're asking for, and those kinds of things, I'm not sure work papers of the income tax are directly relevant.

I don't see the connection. But that's not to say later on, through other discovery, that they could not become extremely important.

Yes, ma'am?

MS. SHAUNESSY: Your Honor, the State would request that they be required to answer the interrogatories or requests for them to disclose who their accountants are. I don't see how that's privileged.

There is no case that cites -- there's no accountant/client privilege in this state, and there is no case that says that that's not discoverable. I mean, they haven't put forth any evidence, either.

THE COURT: Well, I can't see it either, but I'm not wanting -- tell me what works best for you-all.

Do I need to address objections to discovery as we go along? Do I need to address them all at one time?

MS. SHAUNESSY: Well, I would be happy at this moment to have Corporate, Risk and --

THE COURT: When were those productions, et cetera, served and when were the answer dates and when did they pose the objection?

MS. SHAUNESSY: They were first served in July. We had one set of answers filed in August. I rewrote the questions to accommodate their concerns.

We served another set of them in August. They were due in September. They filed their answers to those in September, and then we brought those up for hearing before this Court. So sometime, I guess, in October would have been the production.

And at this point we haven't had production.

THE COURT: And Ms. Shaunessy, keeper of the schedule, have we set aside a date when we're going to address discovery objections?

MS. SHAUNESSY: Yes, Your Honor.

THE COURT: When?

MS. CURRAN: July 9th, Judge.

THE COURT: That's too far away.

MS. CURRAN: But Judge, we are addressing the discovery objections now.

And with regard to the bookkeeper, we're scheduled so that you know, to produce documents March 16th and 17th of closed files and the 21st and 22nd of next week for open files. So that is ongoing.

With regard specifically to the bookkeeper and accountant's name, we do not see how that is relevant information or would lead to the discovery of admissible evidence, especially in light of your ruling right now that we are to produce net worth.

MS. SHAUNESSY: If you would like the State to respond, I think that it is relevant, because I would like to know who did the calculations, and as far as the calculations, how they were done, what factors did they take in.

THE COURT: Yes. I'm not prepared to say that it's not calculated to lead to the discovery of relevant evidence, given the issues that might come about.

MS. SHAUNESSY: I think if we can just have a ruling on the accountants, then the rest I'll try to work out with Ms. Curran. And we can try to tentatively set --

THE COURT: If the objection with respect to the accountant and the bookkeeper is that it was not calculated to lead to the discovery of relevant evidence, that it was burdensome, harassing and undue expense, I'm overruling that objection and ordering the production of the names of the bookkeeper and the accountant.

With respect to the objections lodged on financial net worth, I think I've stated my ruling on that.

Anything else with respect to financial?

MR. DeLEON: There is one thing I do want to get on the record, Your Honor, with respect to net worth.

You were told that one of the reasons that they needed the net worth was to determine whether or not there were reserves posted and a system in place for the payment of claims.

Net worth by definition is not going to tell you that information, because --

THE COURT: That should be what's left over after you've done all that other stuff.

MR. DeLEON: Precisely. And I just wanted to be sure that that's on the record.

THE COURT: Right, and Mr. DeLeon, that didn't enter into my calculus.

MR. DeLEON: Okay. Thank you, Your Honor.

THE COURT: Okay, so now we're ready to address depositions.

MS. SHAUNESSY: Yes, Your Honor. If we have any depositions in the Turks & Caicos -- and I don't mind setting this for another date, since we're not sure yet about the document production or what's going to happen.

But if we do, I don't want to go to the Turks & Caicos Islands. But after reading the case law, I see that if I want to take particular people -- there's two cases on point and they said that if you want to take particular people, it depends on the convenience, whether or not you can make them come to your situs.

I presume that Mr. Bodhanya would say that it would not be convenient for him to come here. So I'm willing to go to the Turks & Caicos on the proviso that, before we go we know that they're either going to answer the questions or they're not going to answer the questions.

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

I, Ms. Betty Haygood, Official Court Reporter, 250th District Court, Travis County, Texas, do hereby certify that the above and foregoing record contains a true and correct transcription of all the proceedings directed by counsel to be included herein in Cause No. 471,568, all of which occurred in open court or in chambers.

I further certify that this transcription truly and accurately reflects the exhibits, if any, offered by the respective parties.

I further certify that costs for the preparation of the said transcript are in the reasonable sum of $276.50.

WITNESS MY HAND this the 23rd day of March, 1992.

\S\
Betty Haygood, CSR-RPR
250th District Court
Travis County, Texas

Certificate No. 471
Date of Expiration of Current Certification: 12/31/92
Business Address: P.O. Box 1748, Austin, Texas 78767
Telephone Number: 512/473-9321

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE, Plaintiffs,	§	IN THE DISTRICT COURT
VS.	§	
RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD., Defendants.	§	OF TRAVIS COUNTY, TEXAS
	§	299TH JUDICIAL DISTRICT

ORDER DENYING DEFENDANT HERSCHEL HANCOCK'S MOTION FOR RECONSIDERATION

On the 13th day of April, 1992, came on to be heard the Motion for Reconsideration filed by Defendant Herschel Hancock concerning the Court's order of March 10, 1992 regarding the defendant Herschel Hancock's objections to the discovery requests propounded by the plaintiffs. Herschel

Hancock appeared herein through his counsel of record Alicia Curran. Plaintiffs appeared herein by and through their counsel of record, the Office of the Attorney General by Linda I. Shaunessy, Assistant Attorney General. The Court, having heard and considered argument of counsel, is of the opinion that such motion should be DENIED.

It is therefore ORDERED that Defendant Herschel Hancock's Motion for Reconsideration is hereby DENIED.

SIGNED this the 13th day of April, 1992.

/s/
JUDGE JOHN K. DIETZ
Presiding Judge

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE, Plaintiffs,	§	IN THE DISTRICT COURT
VS.	§	
RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD., Defendants.	§	OF TRAVIS COUNTY, TEXAS
	§	299TH JUDICIAL DISTRICT

ORDER DENYING DEFENDANT RISK MANAGERS INTERNATIONAL'S MOTION FOR RECONSIDERATION

On the 13th day of April, 1992, came on to be hear the Motion for Reconsideration filed by Defendant Risk Mangers International, Inc. concerning the Court's order of March 10, 1992 regarding the defendant Risk Mangers International, Inc.'s objections to the discovery requests propounded by the

plaintiffs. Risk Managers International, Inc. appeared herein through its counsel of record Terry Scarborough. Plaintiffs appeared herein by and through their counsel of record, the Office of the Attorney General by Linda I. Shaunessy, Assistant Attorney General. The Court, having heard and considered argument of counsel, is of the opinion that such motion should be DENIED.

It is therefore ORDERED that Defendant Risk Managers International, Inc.'s Motion for Reconsideration is hereby DENIED.

SIGNED this the 13th day of April, 1992.

/s/
JUDGE JOHN K. DIETZ
Presiding Judge

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE, Plaintiffs,	§	IN THE DISTRICT COURT
VS.	§	
RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD., Defendants.	§	OF TRAVIS COUNTY, TEXAS
	§	299TH JUDICIAL DISTRICT

ORDER OF MAY 27, 1992 REGARDING DEFENDANTS' MOTIONS FOR PROTECTIVE ORDER AND PLAINTIFFS' MOTIONS TO COMPEL DISCOVERY

On the 27th day of May, 1992, in the above-styled and numbered cause came before this Court The State of Texas and the State Board of Insurance ("plaintiffs") and Risk Managers International, Inc., Herschel Hancock, and Corporate

Underwriters, Ltd. ("defendants") and presented their arguments to several motions set before this Court. Plaintiffs and defendants appeared by and through their counsel of record. Counsel for Nyle Large had notice of the hearing but did not appear. The Court, having heard and considered argument of counsel, is of the following opinion:

It is hereby ORDERED, ADJUDGED and DECREED that:

1. Plaintiffs' Motion to Compel Herschel Hancock to Answer Deposition Questions filed on or about May 22, 1992 is hereby GRANTED in part specifically:

A. Hancock is hereby COMPELLED to answer the following deposition questions:

> 1. "Mr. Hancock have you ever before seen what's been marked as Exhibit 4?"
>
> 2. "Mr. Hancock, in your counterclaim you allege that the plaintiffs' suit is brought to prevent the sale of independently procured insurance that competes with the statutory worker's compensation insurance that plaintiffs regulate. What facts substantiate your claim made in Exhibit 4 that plaintiffs' suit is brought

to prevent the sale of independently procured insurance that plaintiffs regulate?"

3. "Mr. Hancock, what facts are known to you which substantiate your claim that plaintiffs knew that the independently procured workers' compensation insurance product offered by Corporate Underwriters, Limited, and the services offered by Risk Managers International, Incorporated, were not outside of the Texas rules of independently procured insurance?"

4. "Mr. Hancock, you state, and I will quote on Page No. 48 of your counterclaim quote, "The services offered by counter-plaintiff and Risk Managers International, Inc. were not outside of the Texas rules for independently procure insurance, and counter-defendants knew or should have known that the rules governing statutory workers' compensation are different than those for independently procured insurance providers," end of quote. What are all the facts that substantiate your claim that counter that the rules governing statutory worker's compensation are different than those for independently procured insurance providers?"

5. "Mr. Hancock, on page -- the bottom of Page 47 and the top of Page 48 of your counterclaim you have stated, and I will quote, 'Counter-defendants' suit is not brought to protect Texas employers or their employees, but instead to prevent counter-plaintiff from lawfully engaging in the lawful activities of risk management consulting and as third party administrator for Corporate Underwriters, Limited, which entity is an offshore insurance company incorporated and

lawfully operating under the laws and statutes of the Turks and Caicos Islands, British West Indies, that provides independently procured workers' compensation insurance that counter-defendants regulate.' What are all the facts that you know that support your statement that Risk Mangers International, Incorporated, lawfully operates as a risk management consultant and as a third-party administrator for Corporate Underwriters, Limited?"

6. Where is Corporate Underwriters, Limited, lawfully operating under the laws and statutes of the Turks and Caicos Islands, British West Indies?

7. Again, pursuant to our counterclaim on Page 48, what activities is Corporate Underwriters, Limited, engaged in that it is engaging in lawfully under the law and statutes of the Turks and Caicos Islands British West Indies?

8. What are all the facts that your know that support your counterclaim which is shown as Exhibit No. 4 before you?

10. Who are all of the people who would have relevant knowledge about of the facts and allegations that you assert in your counterclaim as evidenced by Exhibit No. 4?

11. What facts substantiate your claims that the State of Texas and the Texas Department of Insurance's lawsuit is frivolous, unreasonable and without foundation as stated in your counterclaim of Exhibit No. 4?

12. What are all of the facts that substantiate your counterclaim as demonstrated by Exhibit No 4 that the State of Texas and the Texas Department of Insurance acted maliciously, in bad faith and contrary to the law by obtaining the ex parte receivership?

13. Are there any other documents or facts that you rely on to support your counterclaim demonstrated in Exhibit No. 4?

B. Hancock is hereby COMPELLED to answer the following deposition question regarding only those documents which are not privileged pursuant to Rule 166b using the date of April 24, 1989 as the date on which litigation was anticipated:

9. What are all the document(s) that support your counterclaim which is demonstrated by Exhibit No. 4?

C. Hancock is hereby COMPELLED to answer interrogatory number 7 and the deposition questions on page 14 of his deposition relating to his current and previous addresses, specifically:

INTERROGATORY NO. 7 State the complete address (street address, city, county and state) of each place where you have lived since January 1, 1985 to the present.

D. Hancock is hereby COMPELLED to answer the following interrogatory only through April 24, 1989:

> *INTERROGATORY NO. 13* Identify all accountants and/or bookkeepers retained by Herschel Hancock from January 1985, through the present.

E. Hancock is hereby COMPELLED to answer the following deposition questions:

> 13. Have you ever heard of Transworld Reinsurers, Limited?
>
> 14. If so, what is Transworld reinsures, Limited?
>
> 15. Where is Transworld Reinsurers, Limited located?
>
> 16. Does Transworld Reinsurers, Limited, reinsure risk underwritten by C.U.?
>
> 17. What lines of insurance that C.U. sells does Transworld Reinsurers, Limited, reinsure?
>
> 18. What is the financial status of Transworld Reinsurers, Limited?
>
> 19. What insurance policies issued by C.U. has Transworld Reinsurers, Limited, had to pay claims on?
>
> 35. I'd like to turn now to the federal lawsuit Cause No. CA3-91-1090-D, which is styled Risk

Managers International, Inc., Herschel Hancock and Corporate Underwriters, Limited, versus the State of Texas, et al. Who on behalf of RMI authorized the filing of this lawsuit?

36. Who on behalf of RMI authorized the filing of the above stated lawsuit?

37. Why are you, Herschel Hancock suing the State of Texas in the case of CA3-91-1090-D?

38. So when I say the federal lawsuit, Mr. Hancock, I'll be referring to that. Why is RMI suing the State of Texas in the federal lawsuit?

39. What acts do you believe the State of Texas or any of its officers or agents has committed against you in the federal lawsuit?

40. What acts do you assert that RMI has committed -- I'm sorry -- what acts do you assert that the State of Texas or any of its officers or directors has committed against Risk Managers International, Incorporated?

41. Why are you suing the State Board of Insurance in the federal action?

42. What acts do you state that the State Board of Insurance has committed against you in the federal lawsuit?

43. What acts do you state that the State Board of Insurance has committed against RMI in the federal lawsuit?

44. What acts has Dan Morales as attorney general committed against in the federal lawsuit.

45. What acts do you state that Stephen Durish has committed against you in the federal lawsuit?

46. What acts do you assert that Linda Shaunessy has committed against you in the federal lawsuit?

47. What acts does RMI assert that Linda Shaunessy as an assistant attorney general has committed in the federal lawsuit.

2. Plaintiffs' Motion to Compel Herschel Hancock to Answer Deposition Questions is hereby DENIED in part, specifically:

A. Hancock's assertion of his Fifth Amendment privilege as to the following interrogatory is hereby SUSTAINED:

INTERROGATORY NO. 14: For each accountant and/or bookkeeper identified in interrogatory no. 13, state the exact purpose for which they were retained, such as, but not limited to, preparation of federal income tax returns, audits, financial statements, etc.

B. Further, the Court recognizes Hancock's assertion of Fifth Amendment privilege with respect to

the following deposition questions and therefore, this Court does not compel Hancock to answer the following questions:

1. Does the prospective insureds send their letter requesting a premium price quotation to RMI?

2. Does the prospective insured receive a letter back with a premium price quotation from C.U.?

3. Does the prospective insured receive a letter back with a premium price quotation from RMI?

4. How does the prospective insured inform C.U. as to whether the prospective insured will accept or not accept the insurance coverage as quoted?

5. Does RMI manage claims administration and losses on behalf of C.U.?

6. If so, how long has RMI done this?

7. Does RMI or any of its employees, agents or representatives have the authority to pay any claims under a Corporate Underwriters, Limited, policy?

8. How long has RMI been adjusting claims on behalf of C.U.

9. Why has RMI not filed claims forms the required claims forms with the stamping office when it adjusts a claim for corporate Underwriters, Limited?

10. Where are claim checks to injured workers or to insureds issued from?

11. If claim checks are issued from RMI's office in Dallas, why is this so?

12. On whose bank account are claims checks drawn?

20. Does RMI charge an administrative fee to C.U.?

21. Did RMI ever receive premium payments from Aleman Food Service for the workers' compensation insurance or the automobile liability from January 1st, 1985, to the present?

22. Has RMI ever mailed or hand-delivered an insurance policy issued by C.U. to ATRA Corporation or a representative of ATRA Corporation?

23. Has RMI ever collected any money from ATRA Corporation that would be money paid to an insurance consultant?

24. Has RMI ever disseminated any information to ATRA Corporation relating to the type of insurance coverage which ATRA Corporation had with C.U.?

25. Has RMI ever adjusted any claims or losses on an insurance policy that listed C.U. as the insurer and ATRA Corporation as the insured?

26. Has RMI ever investigated any claim or loss on an insurance policy that listed C.U. as the insurer and ATRA Corporation as the insured?

27. Has RMI ever received any insurance premiums from Benecorp?

28. Has RMI ever collected any money from Benecorp that would be paid to an insurance consultant?

29. Has RMI ever disseminated any information to Benecorp relating to the rates that Benecorp would be charged if Benecorp purchased insurance from C.U.?

30. Has RMI ever adjusted any claims or losses on an insurance policy that listed C.U. as the insurer and Benecorp as the insured?

31. Has RMI ever investigated any claim or loss on an insurance policy that listed C.U. as the insurer and Berryman as the insured?

32. Has RMI ever investigated any claim or loss on an insurance policy that listed C.U. as the insurer and Bollinger as the insured?

33. Has RMI ever received any insurance premiums from Beneficial Personnel Services of Texas, Incorporated?

34. Has RMI ever received an insurance -- any insurance premiums from Cabaj Enterprises, Incorporated?

3. Plaintiffs' Motion to Compel Verification and Signing of Risk Managers International, Inc.'s Second Amended Responses to the State of Texas' Amended Interrogatories and Document Production Request filed on or about May 22, 1992 is hereby DENIED;

4. Plaintiffs' Motion for Order Enlarging the Number of Interrogatories filed on or about May 22, 1992, as agreed by the parties is hereby GRANTED, and therefore Plaintiffs may request 30 additional answers of any defendant who maintains a counterclaim as of June 1, 1992;

5. Risk Managers International, Inc.'s Motion for Protective Order filed on or about May 18, 1992 is hereby DENIED;

6. Plaintiffs' Response to Risk Managers International, Inc.'s Motion for Protective Order and Plaintiffs' Motion to Compel filed on or about May 22, 1992 with regard to the production of the following documents and computer

records relating to the following topics is hereby GRANTED and Risk Managers International Inc. is ordered to produce: (1) all certificates of insurance, (2) requests for certificates of insurance, (3) approvals from CU to RMI to issue certificates of insurance, (4) bank records, (5) bank statements, (6) net worth, (7) reserve limits, (8) loss ratios, (9) premiums (received, owed, and billed), (10) banking logs, (11) correspondence between RMI and CU, (12) current claims runs, (13) current loss runs, (14) claims deposit accounts, (15) cost plus billing report, (16) monthly billing statements, (17) installment agreements, (18) list of how much to bill each month, (19) salaries, (20) compensation to any employee, or consultant of RMI, (21) audits, (22) names of accountants, (23) balance sheets, (24) annual statements, (25) capital, (26) reserve, (27) assets available for payment of any claims, (28) telephone bills, (29) facsimile transmissions between CU and RMI, and (30) wire transfers or funds sent between CU and RMI or RMI and CU.

7. It is FURTHER ORDERED that RMI shall produce to plaintiffs any and all documents responsive to any outstanding discovery requests no later than June 15, 1992;

SIGNED this the 12th day of June, 1992, NUNC PRO TUNC May 27, 1992.

/S/
JUDGE JOHN K. DIETZ

AGREED AS TO FORM:

/S/
LINDA I. SHAUNESSY
ATTORNEY FOR PLAINTIFF

/S/
TERRY SCARBOROUGH
ATTORNEY FOR DEFENDANT, RISK MANAGERS INTERNATIONAL, INC. AND HERSCHEL HANCOCK AS PRESIDENT OF RISK MANAGERS INTERNATIONAL, INC.

/S/
JOHN BARR
ALICIA CURRAN
ATTORNEYS FOR DEFENDANT HERSCHEL HANCOCK

/S/
HECTOR DeLEON
ATTORNEY FOR DEFENDANT CORPORATE UNDERWRITERS, LTD.

[LIS\CORPUNDR\ORDMAY27]

VOLUME 8
NO. 471,568

THE STATE OF TEXAS	*	IN THE 299TH JUDICIAL
AND THE STATE BOARD	*	
OF INSURANCE	*	
	*	
VS.	*	DISTRICT COURT OF
	*	
RISK MANAGERS	*	
INTERNATIONAL, INC.,	*	
ET AL.	*	TRAVIS COUNTY, TEXAS

- -

STATEMENT OF FACTS

- -

BEFORE: THE HONORABLE JOHN K. DIETZ, JUDGE

- -

APPEARANCES:

MS. LINDA IBACH SHAUNESSY and
MS. DIANE BARLOW-SPARKMAN,
Assistant Attorneys General,
P.O. Box 12548, Austin, Texas 78711-2548

ATTORNEYS FOR THE PLAINTIFF

- - - - - -

MR. TERRY SCARBOROUGH and MR. BILL BRYANT
(Jenkens & Gilchrist),
600 Congress, Suite 2200, Austin, Texas 78701

MR. THOMAS P. WASHBURN
(DeLeon, Boggins & Richards),
480 Austin Centre, Austin, Texas 78701.

MR. JOHN BARR and MS. ALICIA CURRAN
(Burt, Barr & Associates),
304 South Record Street, Dallas, Texas 75202

ATTORNEYS FOR THE DEFENDANTS

- - - - - -

BE IT REMEMBERED that on the 8th day of June, 1992 came on for hearing the above styled and numbered cause in the 250th Judicial District Court of Travis County, Texas before Honorable John K. Dietz, Judge, whereupon the following proceedings occurred.

DIRECT EXAMINATION

QUESTIONS BY MR. BARR:

Q Would you state your name, please, ma'am?

A My name is Monica P. Tumminello.

Q Ms. Tumminello, at the time in September of 1989, were you employed by a company known as Risk Managers International in Dallas, Texas?

A Yes, I was.

Q And were you present on the day that the receivership was served, that Friday afternoon?

A Yes.

Q Can you tell the Judge specifically what happened that day with respect to the books and records of Risk Managers International?

A Well, they came in and said that they were just virtually taking over the office and we were to cooperate with them and give them the books and keys and so on.

Q Did they ask to search your purse and the purses of the other women working there?

A Yes.

Q Did they consume your food goods; that is, personal goods of yours, your candy and your oven-top dinners and things of that nature?

A Yes.

Q Did you witness them telecopy documents from your office to another office?

A Yes.

Q Did they break open filing cabinets of Herschel Hancock, personal filing cabinets of Mr. Hancock?

A Yes.

Q Did they take documents belonging to Herschel Hancock individually and telecopy those documents to third parties?

A Yes, they did.

Q Did they make copies of these documents on the photocopy machine, box them and remove them?

A Yes.

Q Did they ask you and other employees of RMI to sign a statement that said that you now worked for the State of Texas and that you were to be removed as employees for Risk Managers International?

A That's correct.

Q Now, can you tell the Judge, is Risk Managers International located in a building?

A An office building, yes.

Q And that's in Dallas County, Texas?

A That's correct.

Q And it's a physical building attached to land, is it not?

A Yes.

Q And did they change the locks and exclude you folks from the premises?

A Yes, they did.

Q Did you or anybody at RMI, Herschel Hancock or anybody else, consent to these actions?

A No.

Q Did you overhear the receiver tell folks that would call in on the phone that RMI was out of business?

A Yes, I did.

Q You personally heard this?

A Yes, I did.

Q Did you personally observe these receiver folks take and open mail addressed personally to Herschel Hancock?

A They took all the mail.

Q And did they open it?

A Yes.

Q And did you consent, or did anyone consent to their doing this activity?

A No.

Q Did they enter your computer files at RMI and attempt to copy the computer records?

A Yes, they did.

Q Did anyone consent to that activity?

A No.

Q Did the defendants take business supplies and business file folders and copy paper and use that to facilitate the copying of documents which they were transporting to some third party?

A Yes, they used our supplies.

Q Did you give them permission to use your long distance, telefax machine or anything else?

A No.

Q Did anyone at RMI give them permission to use those machines?

A No.

Q I believe you testified that they took your food that was in the icebox. Was that the food of the personnel that worked there?

A Yes.

Q Did anyone give them permission to eat the TV dinners and things that belonged to you folks individually?

A No.

Q And were you compensated for this material that was taken?

A No.

Q Did they show you any document that gave them any right to open your purse or search your body or go through your purse or personal belongings?

A No.

MS. BARLOW-SPARKMAN: Objection. It has not been the witness' testimony that anything other than her purse was searched.

THE COURT: Ma'am, when they asked to search your purse, did you tell them okay?

THE WITNESS: No, I didn't, but some people in the office did.

THE COURT: Did they look in your purse?

THE WITNESS: Not in mine, they didn't.

THE COURT: Okay.

BY MR. BARR:

Q Did they look in other folks' purses?

A Yes, they did.

Q Did they show you any search warrants to allow them to do that?

MS. BARLOW-SPARKMAN: Objection. This is hearsay. She has already testified that she did not consent to their searching of her purse, so they did not search her purse.

THE COURT: I know, but the question is what did she see, so the objection is overruled.

You may answer.

BY MR. BARR:

Q So all I'm asking you is if you were present and what you observed. Did you observe them take women's purses and go through them?

A Yes, I did.

Q And did anyone consent to this activity?

A Not that I'm aware of.

MS. BARLOW-SPARKMAN: Objection, hearsay.

BY MR. BARR:

Q Did you see them bring an armed guard into the premises with a pistol and stick the pistol down on the top of the desk and put his feet up on the desk of the business?

A Yes.

Q When they changed the locks to the business, did they give anyone that worked there a key to it?

A No.

Q Did they take your paycheck from you that had been given to you for services that you had rendered to the company?

A Yes, they did.

Q Do you know what authority they had to take your paycheck away from you?

A No.

Q Did they take the paycheck of the other employees away?

A Yes.

Q Did they enter other folks' offices that were contiguous with RMI, that had interlocking locks but that were separate offices of persons other than RMI?

A I'm not sure.

THE COURT: Could I take just a very brief recess?

(Brief recess.)

MR. BARR: We pass the witness, Your Honor.

THE COURT: Any questions of this witness?

MS. SHAUNESSY: Yes, Your Honor.

CROSS-EXAMINATION

BY MS. SHAUNESSY:

Q Ms. Tumminello, do you have a stamp in your office that states "Corporate Underwriters, Limited" and has a date on it?

A Yes, for the mail. Yes.

Q Okay. When you open the mail, how do you stamp the pieces of mail that come in?

A I just stamped them with the date. And like you said, it does have 'Corporate Underwriters" on the stamp.

Q And where are you physically -- where do you work?

A Right at the very front office.

Q What company do you work for?

A RMI.

Q Which is also known as Risk Managers International, Incorporated?

A Yes, I'm sorry. Risk Managers International, yes.

Q So all the mail that comes in to Risk Managers International, Incorporated then you stamp with a stamp "Corporate Underwriters, Limited?"

A (Witness nodded affirmatively.)

Q Is that a "yes?"

A Yes.

Q Okay. Are you aware or do you know if Corporate Underwriters, Limited has a certificate of authority to conduct the business of insurance in the state of Texas?

A I'm not sure.

Q Okay. Has anyone ever told you that Corporate Underwriters, Limited can sell insurance in Texas?

A No.

Q Okay. Do you know if Risk Managers International, Incorporated has authority to conduct the business of insurance in Texas?

A I'm not sure.

Q Okay. Has anyone ever told you if Risk Managers International, Incorporated can conduct the business of insurance in the state of Texas?

A No.

Q Do you ever mail out and issue commission checks to insurance agents who sell insurance policies where Corporate Underwriters, Limited is the insurance company and where the insured is located in Texas?

MR. BARR: I object to the relevancy of this inquiry in this motion, Your Honor.

THE COURT: The objection is overruled.

BY MS. SHAUNESSY:

Q You may answer the question, Ms. Tumminello.

A Could you repeat some of it again, the main part of it?

Q Certainly.

MS. SHAUNESSY: I'll ask the Court Reporter--

THE COURT: Do you ever mail out commission checks to insurance agents because they have sold some policies, where Corporate Underwriters is the underwriter?

THE WITNESS: Yes, I do mail out checks.

BY MS. SHAUNESSY:

Q Okay. Do you mail out commission checks to Jim Maley?

A Yes.

Q Do you mail out commission checks to Jim Maley for insurance policies that he has sold where Corporate Underwriters, Limited is the insurance company?

MR. SCARBOROUGH: I object to the form of the question. I'm not sure the witness is competent to testify as to what they are.

And the phrasing of the question, Judge - it's a term of art, and the fact that she mails out checks is different from what they might be.

BY MS. SHAUNESSY:

Q Ms. Tumminello, in your job, what do you do in relation to commission checks?

A Well, I mail them.

Q Who writes or fills out the commission checks?

MR. SCARBOROUGH: Your Honor, I have the same objection because what they're called is a term of art, and I object to that. And I would like a running objection to it.

THE COURT: Excuse me. What do you-all call them?

MS. SHAUNESSY: Your Honor, in the --

THE COURT: Excuse me. What do you call them?

THE WITNESS: Consulting fees.

THE COURT: Consulting fees, okay. So just rephrase your question about consulting fees.

BY MS. SHAUNESSY:

Q Ms. Tumminello, who physically writes the consulting fee checks?

A Hugh Thompson.

Q Who physically writes the consulting fee checks today?

A Hugh Thompson.

Q Do you have any involvement in writing the consulting fee checks?

A No.

Q Who figures out how much is due to the insurance consultants in fees?

A Hugh Thompson.

Q How does Mr. Thompson figure out how much is due in the consulting fee?

A I'm not sure. He has something that he goes by. I'm not sure.

THE COURT: Do you know anything about how he does that?

THE WITNESS: I'm not really that familiar with it.

THE COURT: Do you participate in it? Do you help him?

THE WITNESS: I see the checks.

THE COURT: You see the end result. But as to how he comes up with that, do you participate with that?

THE WITNESS: Not really, no.

THE COURT: Okay. The witness has indicated a lack of personal knowledge under 602. Let's move on.

BY MS. SHAUNESSY:

Q Ms. Tumminello, have you ever seen any insurance policies in the offices of Risk Managers International, Incorporated?

A Not really. I don't work in that part of it at all, so I can't say that I have honestly seen any.

Q Who are all the employees at Risk Managers International, Incorporated?

A Who are all of them? You need their names?

Q Yes, ma'am.

A There's Brenda Gardner, Angela Deaton, Sandra Newton. We have three new people. We have Lorenzo Villanova. We have Diane Castro. These are new people.

And we have Cassy Lippit, I think is the last name; and Rebecca Schllikher, S-c-h-l-l-i-k-h-e-r, I believe.

Q Has Mr. Herschel Hancock ever been an employee of Risk Managers International, Incorporated?

A I'm not sure.

Q Does Mr. Herschel Hancock have an office located in the offices of Risk Managers International, Incorporated?

A He has an office in there, yes.

Q Have you ever seen any checks signed by Mr. Herschel Hancock?

A Personally signed? No.

Q Have you seen any checks signed by Mr. Herschel Hancock in a computer form or with a computer script?

A I have the check signer that I use.

Q Okay. Explain to me what the check signer is.

A It just basically stamps the checks.

Q What does the stamp stamp the checks with?

A It has "Herschel Hancock."

Q So are checks stamped with Herschel Hancock's signature?

A Yes.

Q Do you stamp checks with Herschel Hancock's signature?

A Yes.

Q What kind of checks do you stamp with Herschel Hancock's signature?

A Paychecks and company expenses.

Q Whose account are the checks written off of?

A RMI's.

Q Are there any checks written off the accounts of Corporate Underwriters, Limited?

A Other than the consulting fees, no.

Q What account are the consulting fees checks written off of?

A Corporate Underwriters'.

Q Who stamps the signature on the consulting fee checks?

A I do.

Q Whose name is stamped on the Corporate Underwriters checks?

A Herschel Hancock's.

Q So it would be correct to say that Mr. Hancock's stamp goes on the check for both the Risk Managers International, Incorporated accounts and Corporate Underwriters, Limited accounts.

A Yes.

Q Who is Fred Goad?

A He's a former employee.

Q What job did Fred Goad perform at Risk Managers International, Incorporated?

A He was in the claims department.

Q What functions did Mr. Goad perform in the claims department?

THE COURT: Okay, time out. What are we doing here?

MS. SHAUNESSY: I'm just going to show how much involvement the two companies have together, because there's been some assertion, I guess, on the other side that --

MS. BARLOW-SPARKMAN: And Your Honor, we are here also on a Rule 13 motion that the --

THE COURT: Well, but the Rule 13 motion is based on that at the time that you-all applied to the District Court of Travis County for receivership, you did not have the facts.

What I hear in the inquiry is that several years later we're finding out the employee constituents of RMI/CU, and we're not here for a deposition.

And I don't see that this is responsive to their Rule 13 motion. It does not appear to be.

Anything else?

MS. BARLOW-SPARKMAN: Your Honor, I'm surprised that they would put this witness on the stand. I'm still a little perplexed --

THE COURT: Surprised? You're thankful, grateful. Right?

MS. BARLOW-SPARKMAN: Yes, I'm grateful that she has been on the stand. The Third Court of Appeals has already upheld the temporary restraining order.

MR. BARR: Judge, is this an objection?

THE COURT: I don't know what we're doing. I've just told you that your questions do not appear to be relevant to the motion that's on my table right now, and I've asked that you-all move on to something that is relevant.

MS. BARLOW-SPARKMAN: We're prepared to move on.

BY MS. SHAUNESSY:

Q What was the cost of the food goods that you believe were taken during the receivership period?

A I couldn't put a cost on it.

THE COURT: Well, let's get back. How many of these dinners and how many candy bars? I mean, if you had to go out to the grocery store and buy the replacements, how much do you think you would spend on all that the people from the Attorney General's Office and the receiver's office and everybody consumed up that day?

THE WITNESS: Well, the coffee and candy and stuff, I don't know, I would say maybe 30 or $40.

THE COURT: Okay.

BY MS. SHAUNESSY:

Q How many people were on site from the receiver's office, on site at Risk Managers International, Incorporated?

A How many people were working there? Is that your question?

Q Yes, ma'am.

A I would say probably six.

Q How many employees from the State of Texas came to Risk Managers International's office during the receivership time?

A I think there was four.

Q And could you state the names of the people who came?

A I think Jimmy Clark was one. There was one fellow by the name of Nicholas, I believe, that I distinctly remember. He was very threatening.

And there was an attorney, I believe. I can't remember his name. And then there's a lady that came in later on.

Q Do you have a copy of the document that you said that you signed stating that you became a State employee?

A I didn't sign it.

Q Do you know anybody -- do you have a copy of what was presented to you indicating that you were a State employee?

A No.

Q Do you recall what the document said?

A No.

Q Do you recall who gave you the document?

A Not really, no.

Q What personal documents of Mr. Hancock were telecopied to another source by the receiver's employees?

A I don't have personal knowledge of what documents were copied, but I did see them going through his desk.

Q How did the receiver break into the file cabinets?

A They virtually asked for all the keys.

Q So your testimony is that they broke into the file cabinets by asking for the keys and using the keys to unlock the file cabinets?

A Yes.

Q Okay. Did you ever receive your paycheck that the receiver's employees took from you?

A No, they had cut the signature off.

Q Did you receive a new check from the receiver's employees?

A From the receiver's -- oh, okay. Yes, later on. Yes.

MS. SHAUNESSY: That's all, Your Honor.

THE COURT: Any redirect?

MR. SCARBOROUGH: No.

THE COURT: Thank you, ma'am. You may step down.

(Witness excused.)

MR. SCARBOROUGH: I would like to call Angela Deaton to the stand.

MS. BARLOW-SPARKMAN: Objection, Your Honor. The witness has not testified as to why he would have personal knowledge of such things.

Furthermore, once again, what is the purpose of Mr. Barr's testimony here? What aspect of the motion are we now addressing?

THE COURT: I understand the relevance. And if you can, just briefly gloss over as to how he has acquired personal knowledge of it.

BY MR. SCARBOROUGH:

Q We were getting there, but let's skip to that point.

How do you know, or have personal knowledge that the records seized were part of the records in this case?

A They asked for all the records in the underlying subpoena action in March of '89. And if they asked for all the records, I presume that's all the records.

I have no knowledge of what records exist out there at that business or what records don't exist. I just know that the documents they asked for then are the same documents they're asking for now.

Q And did they produce and was there a hearing after -- well, let me back up to get it chronological.

After that supersedeas bond was approved and the case was on appeal -- and were you and Hector DeLeon involved as attorneys at that point in time?

A That's accurate.

Q And was that before I became an attorney of record in the case?

A That's accurate.

Q Now, this proceeding that we're here on in 471,568 started, the record will reflect, with an application for receivership and a TRO presented ex parte?

A That's accurate.

Q Were you or Mr. DeLeon consulted at all by Ms. Shaunessy or anyone on behalf of the Attorney General's Office before that was presented ex parte?

A We were not.

Q As a result of that ex parte order, was there a hearing to quash the receivership?

A There was.

Q And was that quashed?

A Yes.

Q And as part of the evidence, what was part of the evidence introduced in that receivership from the Attorney General?

A There is a stack of approximately eight inches in height of documents seized by the receiver at the offices of Risk Managers International, and those documents were objected to.

Q Were those portions of the documents which were on appeal in the other case?

A Absolutely they were.

MR. SCARBOROUGH: Pass the witness.

CROSS-EXAMINATION

BY MS. BARLOW-SPARKMAN:

Q Mr. Barr, you referred to a stack of documents that were introduced at the temporary injunction hearing and that those documents had been obtained during the temporary receivership. Is that correct?

A That's what they purported to be, yes, ma'am.

Q In fact, Mr. Barr, those exhibits that were introduced and admitted into evidence at the temporary injunction order were Exhibits Nos. 29 through 31 and 33 through 39, a total of nine exhibits. Is that correct?

A I'll take your word for it. I remember a stack of about eight inches tall of documents that had receivership certificates on them.

Q And at that temporary injunction hearing, Mr. Barr, isn't it correct that there were a total of 59 exhibits introduced by the State and admitted into evidence at that hearing? Isn't that correct?

A I don't know.

Q Do you have any reason to believe that that's not correct?

A Yes, I do. I believe there was 39 exhibits, total. The number 39 sticks in my mind.

Q That is because, Mr. Barr, Exhibit Nos. 29 through 31 and 33 through 39 were exhibits introduced and admitted, and those nine exhibits were in fact obtained

during the temporary receivership of Corporate Underwriters and Risk Managers.

There were, in fact, 59 exhibits introduced and admitted into evidence at the temporary injunction hearing. Does that help refresh your recollection?

A It does not refresh my recollection, but I'll take you word that there was a number of exhibits admitted at th hearing.

Q And Mr. Barr, your client took the order up on appeal did it not, with respect to the entry of the temporar injunction?

A We appealed the interlineation, the handwritten languag on the order. We agreed to an injunction at tha hearing, Ms. Barlow-Sparkman. And so we appeale the gratuitous interlineation.

Q On appeal to the Third Court of Appeals, you argue did you not, that Exhibits 29 through 31 and 33 throug 39 -- again, we're talking about the documents that we obtained during the temporary receivership -- shou have been suppressed, that they were wrongful admitted into evidence?

A I believe that we hired Mike Hatchell from the Ran law firm, and I believe that those points were argue yes.

Q And is it not correct, Mr. Barr, that the Third Court Appeals determined that Exhibits 1, 2 and 3 alon which were not documents obtained during t temporary receivership, provided sufficient cause f the Trial Court's ruling, and they, in fact, affirmed t Trial Court's ruling?

A I don't agree with that.

Q Okay. Well, you would agree, Mr. Barr, that we could submit to this Court today and this Court could take judicial notice of the opinion of the Third Court of Appeals. It was Cause No. 3-89-212-CV in a case captioned Risk Managers International, Inc., Et al. versus The State of Texas?

A Well, certainly the judge can take notice of an appeal and of an opinion of a court.

Q Mr. Barr, you testified earlier that you have represented in the past Risk Managers International, Inc. and Herschel Hancock. Correct?

A Correct.

Q And have you in the past or do you now represent in any capacity Corporate Underwriters, Limited?

A I represent Herschel Hancock, Risk Managers International and Corporate Underwriters in the defense of a bad faith suit filed at the -- I believe it's in Bexar County, Texas.

And I believe there's a suit filed in Harris County, but I'm not certain.

Q Do you generally represent Corporate Underwriters, Limited in advising them on matters other than a specific lawsuit that has been filed?

A I absolutely do not. I simply defend them on cases filed.

Q Have you provided advice to Corporate Underwriters, Limited about this case that has been filed, the one that we're here for today?

A What advice I have provided Corporate Underwriters, Limited with respect to what case would be an attorney/client privilege, and I would invoke that on behalf of the client.

THE COURT: It's noted.

MS. BARLOW-SPARKMAN: No further questions for Mr. Barr.

MR. SCARBOROUGH: That's all. Your Honor, at this time we would offer Movant's No. 3, which has been previously been filed with the Court. But it's, I believe in November, the First Amended Affidavit of Herschel Hancock.

THE COURT: Movant's 3 is admitted.

(Movant's Exhibit No. 3 was
(offered and received into
(evidence.

MS. BARLOW-SPARKMAN: I would note, Your Honor, that with the admission of Movant's No. 3 the State does not agree with the statements that Mr. Hancock has made in that affidavit that was filed several months ago.

As you know, each time Mr. Hancock has appeared he has taken the Fifth Amendment and has not testified on any of these issues.

MR. SCARBOROUGH: We have nothing further. We rest on the motion.

THE COURT: All right, thank you.

MS. SHAUNESSY: Your Honor, I have one witness I would like to call.

THE COURT: All right.

MS. SHAUNESSY: Your Honor, I would like to call Gary Johnson to the stand, please.

(Witness sworn.)

GARY JOHNSON,

called as a witness by the Respondent, having been duly sworn, testified as follows.

DIRECT EXAMINATION

BY MS. SHAUNESSY:

Q Mr. Johnson, could you please state your name?

A Gary Johnson.

Q Briefly describe your educational background.

A I have a BBA in accounting and finance.

Q Where are you presently employed?

A At the Texas Department of Insurance, in Tax Administration.

Q What position do you have at the Texas Department of Insurance in the Tax Division?

A I'm the director of that division.

Q How long have you held that position?

A I was recently appointed to that position. I've been in Tax for about three and a half years.

Q What functions does the Tax Division perform?

A We collect premium taxes, maintenance taxes, miscellaneous fees and assessments from licensed companies, from surplus lines agents, from independently-procured taxes, as well as unauthorized insurers.

Q What are your job duties at the Texas Department of Insurance?

A I administer the processing of all tax forms administration, as well as the review of all taxes, tax forms that are presented. We also conduct audits and examinations of companies that are both licensed in the state, as well as companies that are not licensed in the state. We also do examinations of surplus lines agents.

Q Are you familiar with the unauthorized insurance premium taxes in the Texas Insurance Code, Article 1.14-1, Section 11?

A Yes, I am.

Q Are you familiar with the independently-procured insurance taxes in Section 12 of Article 1.14-1 of the Texas Insurance Code?

A Yes, I am.

Q Who pays the premium tax under Article 1.14-1, Section 11?

A The unauthorized insurer does.

Q And when you say "unauthorized insurer," does that mean the insurance company?

A That's correct.

Q Who pays the tax under Section 12, the independently-procured tax?

A The insured does.

Q When you say "insured," what does that mean?

A The policyholder.

Q What information is needed in order to determine the amount of the unauthorized insurance premium tax under Texas Insurance Code Article 1.14-1, Section 11?

A We would need to know the exact amount of premiums received during a calendar year, which would be the same as a tax year. We would need to know the amount of premiums received on a cash basis.

We would also need to know if it was allocated properly to the State of Texas or whether it was properly allocated and reported to another state.

Q Okay. Do the commissions paid to insurance agents - are they included in premium tax calculations?

A No, they are not.

Q I would now like to hand you Exhibit No. 2, if I might. I would ask you to look at Exhibit No. 2.

Does Exhibit No. 2 tell you the amount of premium taxes which the insurance company actually received from Employers Select Management, Incorporated, which is the named insured on Page No. 1 of Exhibit 2?

A No, there's no indication here that this is the amount of premiums that were paid on this policy. I can elaborate on that if you would like.

Q That would be fine.

A Okay. First of all, the policy period is over two tax years.

MR. BARR: Judge, I'm going to object. That's nonresponsive to the question.

THE COURT: The objection is overruled.

BY MS. SHAUNESSY:

Q This is over two calendar or tax years. The policy period could have also been terminated.

The policy could have been terminated before the end of the period, therefore these premiums may never have been paid. Therefore if you look at this, there could be an overstatement of premiums.

By the same token, there could have been an adjustment in the policy premiums that were not indicated here.

Q Does Exhibit No. 2 indicate the exact date on which the premiums were received by the insurance company?

A No, it does not.

Q I would like to direct your attention to Page 1 of Exhibit No. 2, where it talks about the claims deposit fund. The first page of Exhibit No. 2, please.

A The first page, this one right here (indicating)?

Q No, I'm sorry.

A The top sheet, marked Exhibit 1?

Q Yes, marked Exhibit 1.

A Okay.

Q I would direct your attention to Paragraph No. 3(b) of Exhibit 2, Page 1. What does the 14 percent fee represent?

A I'm not exactly sure what it is, but I would venture that it is a -- it's part of this agreement, but it is a premium payment.

I'm not sure if it's part of the replenishment of the account or what, but I would consider it premiums.

Q If you were going to conduct an audit relating to the premium taxes, would you want to know all of the information relating to the claims deposit fund so you could interpret whether or not the claims deposit was, in fact, part of the premium or not?

A That's correct.

MS. SHAUNESSY: At this time, Your Honor, I would like to have marked as the next exhibit the order of March 10th regarding the discovery of financial information of Defendant Risk Managers.

THE COURT: Is the order in the file?

MS. SHAUNESSY: Yes.

THE COURT: Then I take judicial notice of it.

(Respondent's Exhibit No. 1
(was marked for
(identification.

BY MS. SHAUNESSY:

Q I would like to hand you what's been marked as Respondent's No. 1.

MS. SHAUNESSY: I was going to have the witness testify that the documents as ordered would be relevant in determining the premium taxes.

Q Mr. Johnson, please look through Respondent's Exhibit No. 1. And with the exception of Interrogatories 13, 14, 16, are all of the documents or questions requested in the order of March 10th - would those responses help in determining the premium taxes which would be owed under Article 1.14-1, Section 11?

A Well, specifically on Interrogatory No. 11, that's the identification of all premiums which were received by Risk Managers, definitely we would need that in order to determine when the premiums were received, during what tax period, and in order to determine when the taxes were due.

Q Okay.

A You said except 13, 14, and 16?

Q Yes.

A So 15, "Identify all bank or savings and loan accounts of any type in the name and/or for the benefit of Risk Managers International, Incorporated, giving the account number."

This would be something that we would normally review on all tax cases.

Q As would the rest of the interrogatory and requests for production, would you normally look at those types of documents in determining if premium taxes were properly paid?

A Yes, that's correct.

MS. SHAUNESSY: No further questions, Your Honor.

CROSS-EXAMINATION

BY MR. SCARBOROUGH:

Q Mr. Johnson, looking at Interrogatory No. 11, if you had that information, that's what you would need to calculate the premium tax, isn't it?

A That is one of the things we'll need.

Q Couldn't you do it from that and that, alone?

A We couldn't prove that these were absolutely the premium taxes due for any given period without further review of supporting documents.

Q I'm not talking about proving. But couldn't you calculate it from the information listed in Interrogatory No. 11? That is, "All premiums received by Risk Managers with respect to risks resident, located or to be performed in Texas for insurance policies on which Corporate Underwriters was represented to be the insurer."

A We could make that initial calculation, yes.

Q Okay. Now, you haven't seen, have you, sir, the audit? You were in the courtroom when Ms. Alicia Curran testified?

A Yes.

Q And you heard her mention the audit that has been produced?

A Well, yes.

Q You haven't seen that, have you?

A No, I have not.

MR. SCARBOROUGH: No further questions.

MR. BARR: I have a couple, Mr. Johnson.

CROSS-EXAMINATION

BY MR. BARR:

Q It is the person buying the insurance under independently-procured insurance who has the obligation to pay a tax to the State of Texas in the amount of 3.85 percent of the amount of premium they pay. Is that correct?

A That's correct, if it's independently-procured.

Q Correct. Now, how many audits have you done in your department of independently-procured insurance in the last year?

A I would say that we probably do about 20 a month.

Q Of independently-procured?

A Yes.

Q Now, in these 20 a month that you do, do you audit the premiums of the insurer, or the insured?

And nothing the State has said changes the fact that the order they obtained was done so ex parte, when they had full knowledge of lawyers representing the various parties at the time they went to get it. And that's uncalled for.

Thank you.

THE COURT: Okay. Have you-all worked out the wording on this temporary injunction order against Corporate?

MR. WASHBURN: I believe we have, Your Honor.

THE COURT: All right. And will you-all clue me in if you want my signature on it?

MS. SHAUNESSY: Yes, sir. We have to add the date of the permanent injunction and that no bond is required and take out the word "now" in the last line.

MR. WASHBURN: And reflect the fact that the permanent injunction hearing is set for October 5th.

MS. SHAUNESSY: October 5, 1992 at 9:00 a.m., and that no bond is required of the State.

THE COURT: A true and correct copy which is attached as Exhibit A, incorporated, is now in effect. I'm signing this. You-all make the interlineations here.

MS. SHAUNESSY: Thank you, Your Honor. We'll take care of that.

THE COURT: First of all, with respect to the Rule 13 motion and the motion, in essence, for a protective order with respect and sanctions with respect to the material received during the receivership, the Court finds once again that this original receivership and this original lawsuit was not

groundless and not brought in bad faith and for the purpose of harassment.

With respect to the due process rights of Mr. Hancock, there is no evidence before the Court now or ever that the receivership took any of the personal documents or in any way violated the constitutional rights of Mr. Herschel Hancock.

With respect to the Lunsford ruling of this Court with respect to the financial information of Corporate Underwriters, once again the Court orders and compels the production of that financial information, relying on the scope of the Texas Rules of Civil Procedure, Rule 166b, that discovery is not only for relevant information, but that which might tend to lead to the discovery of relevant information.

The Court makes a specific finding that that which is requested under the financial - and based on the case law that's been provided to the Court, that this falls within the proper scope of discovery.

With respect to the compulsion of requiring the production of certain information by Corporate Underwriters, the Court, in addition to its previous rulings, now wishes to add the following:

Corporate Underwriters has been incorporated by the Turks & Caicos Islands under a specific provision of the ordinance.

If one takes a look at the corporate ordinance of 1981 -- and I believe the other one is 1979 -- Turks & Caicos has a scheme for regulating and registering corporations that are within its jurisdiction.

In part, the ordinances make a great deal of sense in comparison to the Uniform Business Corporations Acts that are being modeled and adopted by the states.

It is interesting to note that if the corporation is doing business within Turks & Caicos Islands, then Turks & Caicos is very specific about the regulation of that corporation.

For instance, if the corporation is doing business within the islands, it's noted within the ordinances that the directors of the corporation can have unlimited liability, such that if the corporation goes defunct they look at the directors for recompense.

Similarly, the members; that is, the stockholders of a corporation also have unlimited liability.

The corporations that do business within Turks & Caicos and are incorporated under the Turks & Caicos have to keep certain registers. They have to keep what we would call a stock register, and every stock transaction is open and available for inspection during business hours to members of that corporation.

There is also required to be kept a register of mortgage debentures and other types of debts of the corporation, also available for inspection.

There has to be a list of directors and officers that gives their address and what business they're required to do. And there's a penalty for not keeping accurate registers.

There has to be an annual meeting for the benefit of the stockholders. This is if they are doing business within the jurisdiction of Turks & Caicos.

Now, specifically Section 200 allows a corporation -- first of all, they have to certify that the purposes of the corporation are not to be accomplished within Turks & Caicos; that is, they're going to do business outside of Turks & Caicos. In this instance, the state of Texas.

Under Sections 201 and 200, they are exempted; a corporation that certifies that "I'm not doing business in Turks & Caicos, but I wish to be registered or certified in Turks & Caicos," is exempted from the following provisions of the ordinance:

Sections 6 through 8, 40, 42, 44, 45, 46, 52, 53, 54, 56; Sections 25, Sub (3); 25, Sub (4); 26, Sub (1); 26, Sub (3); 36, 37, 38, 92(c), and 207 through 217, et seq.

What's exempted if you're doing business outside of Turks & Caicos but are incorporated within Turks & Caicos? Well, you no longer have to keep a list of your members.

You no longer have a register of stock transactions that's open and available for inspection. You're no longer under a penalty to keep an accurate register.

You no longer have to keep a register of your debts. You no longer have to keep a list of your directors and officers and what business they do and what address they are.

Not only that, you no longer have a penalty for not keeping such a list. You don't have to have an annual meeting.

You give a statement which says that the directors have limited liability as opposed to unlimited liability.

You no longer have to have a list of your stockholders. You no longer have to have a register of your members, and you no longer have to turn only in an annual list of your members to the registrar of the Turks & Caicos corporation.

In addition, it's noted that in Sections 207 and 217, if you're a foreign corporation; that is, if you are a Texas corporation and you wish to do business in the Turks & Caicos Islands, you have one month to register.

You have to provide a list of your directors, a registered agent, and you have to pay an annual $250 Turks & Caicos fee, paid annually.

In short, the Turks & Caicos Islands has a system for foreign corporations doing business within Turks & Caicos, that they require specific disclosure of particular information. And yet Turks & Caicos, once a corporation certifies that it wishes to do business outside of Turks & Caicos, provides a haven for secret corporations that are not effectively regulated by any jurisdiction. And this is unconscionable.

The Turks & Caicos Islands, in this supposed confidentiality, provide no effective regulation for a corporation ostensibly certified and registered in the Turks & Caicos Islands as long as they certify "We're not going to do our dirty business here."

The Court has relied upon, among other things in its decision to require the disclosure of information in violation of Section 201 of the 1981 Ordinance of Corporations, the fact that Corporate Underwriters has conducted business - shown by the evidence beyond a preponderance of the evidence to have conducted business within the state of Texas, to have kept a bank account where its monies were stored in the state of Texas, to issue checks within the state of Texas, in short, to have done business within the state of Texas.

If that's the case, then they need to comply with the laws of the state of Texas.

Motion for reconsideration of the Court's previous ruling is denied. The material is ordered produced instanter. Both the financial information, the information -- One last thing that the appellate court should take note of.

The provision of 200 of the Turks & Caicos Islands is that it doesn't even have to be material that was developed in the Turks & Caicos Islands. It says that the information is

confidential even if it originates somewhere else and is brought into the Turks & Caicos Islands.

So information in this case that was made, designed, produced in the state of Texas is taken into the umbrella of the Turks & Caicos Islands.

We want our information and we want it now. Thank you-all.

(Recess.)

THE STATE OF TEXAS)

COUNTY OF TRAVIS)

I, Ms. Betty Haygood, Official Court Reporter, 250th District Court, Travis County, Texas, do hereby certify that the above and foregoing record contains a true and correct transcription of all the proceedings directed by counsel to be included herein in Cause No. 471,568, all of which occurred in open court or in chambers.

I further certify that this transcription truly and accurately reflects the exhibits, if any, offered by the respective parties.

I further certify that costs for the preparation of the said transcript are in the reasonable sum of $515.00.

WITNESS MY HAND this the 10th day of June, 1992.

\S\

Betty Haygood, CSR-RPR
250th District Court
Travis County, Texas

Certificate No. 471
Date of Expiration of Current Certification: 12/31/92
Business Address: P.O. Box 1748, Austin, Texas 78767
Telephone Number: 512/473-9321

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE, Plaintiffs,	§	IN THE DISTRICT COURT
VS.	§	
RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD., Defendants.	§	OF TRAVIS COUNTY, TEXAS 299TH JUDICIAL DISTRICT

ORDER DENYING DEFENDANTS' JOINT MOTION PURSUANT TO RULE 13 REGARDING PLAINTIFFS' PETITION AND DISCOVERY FROM RECEIVERSHIP AND SUPPLEMENTAL MOTION FOR RECONSIDERATION

On the eighth day of June, 1992, this Court heard the Defendants' Joint Motion Pursuant to Rule 13 Regarding Plaintiffs Petition and Discovery From Receivership and

Supplemental Motion for Reconsideration ("Motion"). Defendants Corporate Underwriters, Ltd., Risk Managers International, Inc., and Herschel Hancock appeared at the hearing by and through their respective counsel of record. Plaintiffs the State of Texas and the State Board of Insurance appeared at the hearing by and through the Attorney General for the State of Texas. Defendant Nyle Large joined in the Motion, but did not appear at the hearing.

Mr. Large, Mr. Hancock, Risk Managers International, Inc., and Corporate Underwriters, Ltd. will be referred to as "defendants." The State of Texas and the State Board of Insurance will be referred to as "plaintiffs."

After considering the evidence admitted at the hearing and the argument of counsel,

IT IS HEREBY ORDERED ADJUDGED AND DECREED THAT DEFENDANTS' MOTION IS DENIED.

IT IS FURTHER, ORDERED, ADJUDGED, AND DECREED that Corporate Underwriters, Ltd. must produce instanter to the Court for in-camera inspection all responses and responsive documents requested by plaintiff State of Texas' First Amended Interrogatories, First Amended Request for Production and Second Amended Set of Requests for Admissions.

Further, IT IS ORDERED, ADJUDGED, AND DECREED, that Herschel Hancock and Risk Managers International, Inc. must produce instanter all documents and answer instanter all interrogatories as ordered by this Court on March 10, 1992 and April 14, 1992 pursuant to the following orders: (1) Order of March 10, 1992 Regarding the Discovery of Financial Information of Defendant Herschel Hancock; (2) Order of March 10, 1992 Regarding the Discovery of Financial Information of Defendant Risk Managers International, Inc.; (3) Order of April 14 1992 Denying Defendant Risk Managers

International's Motion for Reconsideration; and (4) Order of April 14, 1992 Denying Defendant Herschel Hancock's Motion for Reconsideration.

SIGNED on this the _____ day of June, 1992 NUNC PRO TUNC June 8, 1992.

/S/
JUDGE JOHN K. DIETZ

AGREED AS TO FORM:

/S/
LINDA I. SHAUNESSY
Attorney for
Plaintiffs

/S/
JOHN BARR/ALICIA CURRAN
Attorney for Herschel
Hancock as an individual

/S/
TERRY SCARBOROUGH
Attorney for Risk Managers International, INC. and Herschel Hancock as President of Risk Managers International, Inc.

/S/
HECTOR DeLEON
Attorney for Corporate Underwriters, Ltd.

/S/
MARC RICHMAN
Attorney for Nyle Large

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ORDER DENYING DEFENDANTS' JOINT MOTION PURSUANT TO RULE 13 REGARDING PLAINTIFFS' PETITION AND DISCOVERY FROM RECEIVERSHIP AND SUPPLEMENTAL MOTION FOR RECONSIDERATION